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TRIAL FOR ADULTERY.

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THE

WHOLE PROCEEDINGS

ON THE

TRIAL

OF

JOHN BELLENGER GAWLER, Esquire,

FOR

CRIMINAL CONVERSATION

WITH

LADY VALENTIA,

IN THE

COURT OF KING'S BENCH, BEFORE LORD KENYON.

Taken Verbatim in Short Hand.

LONDON:

PRINTED FOR THE EDITOR, BY J. DOWNES, NO. 240,
STRAND, NEAR TEMPLE BAR.

1799.

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TRIAL FOR ADULTERY

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TRIAL

JOHN DE FRENGER GAVIN

CHURCHMAN

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ADULTERY

COURT OF KING'S BENCH, WESTMINSTER



CHURCHMAN

LONDON

PRINTED FOR THE EDITOR, BY J. ROBERTSON, 10, ST. MARK'S LANE, LONDON.

1792

TRIAL FOR ADULTERY.

The Right Hon. GEORGE ANNESLEY VISCOUNT
VALENTIA, *of the Kingdom of Ireland,* PLAINTIFF.

AGAINST

JOHN BELLENGER GAWLER, ESQ. DEFENDANT.

MR. G. N. BEST stated the Declaration to
the following effect.

That the defendant JOHN BELLENGER GAWLER,
on the 18th of May, 1794; and on divers other days
and times, between that day and the day of exhi-
biting the bill of the plaintiff, with force and arms,
&c.—at Westminster, in the County of Middle-
sex, had *Criminal Conversation* with LADY ANN
VALENTIA, the wife of the plaintiff; by which he
was deprived of the society, and fellowship, and
also of the aid, service, and assistance of his wife
in his domestic affairs; which he ought to have
had, to his damage of 10,000*l.* The defendant
pleaded NOT GUILTY, upon which, issue is joined.

THE HONORABLE THOMAS ERSKINE,

May it please your Lordship.—Gentlemen of the Jury. You have heard from my learned friend who has opened the pleadings to you, the nature of the injury of which my Lord Valentia complains; and I take it for granted, as part of the public, you cannot but have had some information from those various channels of intelligence which it is not only the characteristic, but a peculiar advantage of a free country to possess. For there have been circumstances belonging to this case, and all the matter with which it is connected, is so extremely peculiar and singular, that it is quite impossible, living in this great Town, you can be altogether strangers to them:—however, as those circumstances are not collateral to the present enquiry, and will not come under your consideration to day, I shall say nothing, except, that I consider the Noble Lord, whose counsel I am, as one of the most unfortunate of human beings; and that he must continue so either for the rest of his life, or he must be restored; if restored he can be, in part to his happiness by your Verdict.

Gentlemen. There are no sort of cases that create so great an embarrassment in my mind, as cases like the present; and I am very ready to confess, and I have made this declaration before, and am willing to suffer any loss of employment which may arise from this public communication,

that although in former times, I apprehended I had an opportunity of conferring services upon those who employed me; yet, I do declare publicly, there is not a gentleman at the Bar, so little qualified as I am, to conduct cases of the sort I am at present engaged in; for when I look back to my professional life, and recollect the various, almost innumerable times, that I have been, in this immoral age in which we live, called upon to make the complaint which I am now making to you, I cannot help recollecting the variety of modes in which I have addressed myself.—I cannot help calling to memory the images that presented themselves to my mind upon those occasions; and I fancy I hear the same dull sentences drawled over, and reiterated for eighteen years.—It brings also along with it a melancholy reflection; for when I consider how much the public prosperity of my country depends upon the morals of its inhabitants; when I recollect that the degradation of morals, in every age and country in the world, is the forerunner of the greatest public calamities; I cannot forbear for the good of this yet happy country, to warn all those who are concerned in the administration of Justice, to take care how they perform their part in beating down immorality, in stigmatizing vice; and not only to redress persons who complain, as the Noble Lord does in this case, of the loss of his happiness; but to attend also, that the example of their judgment shall operate upon the public at large.

Gentlemen. It has happened to me frequently, to hear his Lordship's sentiments upon this subject; and it is unnecessary for me to express the gratitude, which as one of the public I feel to that noble person, for his conduct on the trial of these causes—In this case, I shall not desire, as counsel, to exaggerate the nature of the action; the injury must depend, as it cannot but depend, upon various circumstances, which constantly occur in similar cases, and has divided the injury into different classes,

Where a man receives this injury in consequence of having led his wife into the gay circles of the world; where her mind is naturally and unavoidably a little debauched, perhaps, by too great a mixture in society in general; more especially if he observes, in consequence of her beauty or accomplishments, that she is followed by the lighter part of the public; who are pouring into her ears their idle addresses; and it happens that the destruction of the husband's peace is the consequence of such a career. His right, then, to damages, is little; because, he himself, has been the harbinger of his own wrong; he has led to the miseries which fall upon him if he does not take the earliest opportunity of checking them: but Gentlemen, the case before you is of a very different description—the scene of seduction has not been in the great world; the scene of seduction has not been in the higher circles of amusement,

which is too frequently the case ; but it has been where it was impossible for any human prudence to guard against it, without breaking up every thing which constitutes the consolations of human life.—If a man sees his wife followed in public ; or if he sees her even addressed with more than the ordinary complaisances which take place between men and women in public, and sees there is an attempt to invade his happiness ; then it is his duty to stop it, and prevent it if in his power ; but if he sees his wife, or any other member of his family, only addressed with complaisance and kindness by those who are bound to him by all that is sacred in friendship, and all the obligations that can bind men of honor together ; he stands in a shocking situation, indeed, if he find himself deceived.

Gentlemen. I am given to understand, that soon after this noble couple were married, Lord Valentia not having arrived at the age of 20, and his Lady only 16 years and seven months ; he had the misfortune to become acquainted with a practitioner of the Law, an eminent attorney, far advanced in years, living in Essex Street, and with his two sons, one of whom is the defendant in this cause ; the other Mr. Henry Gawler, a gentleman at the Bar, who became his trustee in the articles that preceded the marriage, in consequence of that, the greatest intimacy took place between all the members of the family. Lord Valentia is a

very young man, and a man of an unsuspecting temper, and if it was otherwise among us, what is to become of society ; where are all its consolations, if when a man of rank in the world takes upon himself offices which are sacred to friendship, and conducts himself in a manner which leads you to consider yourself an object of esteem ; where are the consolations of life if you are to have your mind constantly brooding over some conspiracy against your honor ? The law calls upon a man to be circumspect ; but it does not call upon such a man for such a degree of jealousy as to be continually raising doubts in his own mind ; and a man cannot be said to be a person negligent of his honor, because he gives credit to others for the possession of a similar temper.

Gentlemen. The charge which I make upon the gentleman ; and I make it firmly, until I hear it contradicted by evidence ; and which if it so fastened upon him, you will scourge with a verdict to prevent others offending in the like manner ; I say the charge I make upon the defendant is, that having approached the person and family of this nobleman, under the protestations of the strongest friendship, being connected with him in the closest confidence that human life can beget in society ; he sported with every thing that is sacred among mankind, and took the advantage of the absence of the noble plaintiff, when driven from his house in consequence, perhaps, of too lavish an expendi-

ture; but which took place under the eye of this very family; he took the opportunity when the husband had been driven from home, to complete his ruin, and to destroy his comfort.

I apprehend in addressing myself to gentlemen of your description, you must feel that every thing a man can call comfort is destroyed when placed in such a situation.—Yet it is not only the destruction of conjugal happiness,—of domestic comfort, which my noble client may now complain of; but if he stood only there, he would stand only complaining of a case, which I have had many melancholy occasions to state; but when he stood in this situation, and was preparing to do that which one would have thought common humanity would have allowed him to accomplish; when he wished to cut himself clear from the corrupted branches of his family; when he wished to do that which, to be sure, if adultery had been accomplished, he had right to do, the right of calling upon the gentleman to make compensation for his wrong; he was told by a confidential friend of the defendant, (and I will name no names until it becomes necessary to do it) he is told that he shall not place himself in that situation in which he is now placed; that he shall not make the complaint I am now making to you; that he shall not go to the legislature to call for recompence for the seduction of his wife; for that the adulterer will set him at defiance, if he attempts to stir in vindicati-

on of his own honor and life ; and that he shall not complain of his wrongs, for if he does, he shall have other matter more dangerous to complain of ; he shall be a man stigmatized in society, a man not fit to live among christians ; human nature is of a vague description, and a history of that nature gives many examples of persons who had not fortitude enough to meet the shock of such a charge accompanied by proof ; and I am not sure that in proportion to a man's fortitude he would not, perhaps, be likely to shrink from a charge of such a nature ; for in proportion as it pleased God to fill a man's mind with those dispositions which nature gives him, so does he feel an abhorrence of every thing that obstructs its course ; in the same proportion does he see, with horror, the charge to which I have alluded, but which I will not name ; he says to himself, in other cases I must stand at the Bar of the public, and have the charge proved upon me ; and if it is not proved, I destroy my enemy ; if it fails in the establishment, I go forth in triumph ; and I glory in my acquittal—But Gentlemen, it is not so in a charge of this peculiar nature ; it hangs about a man, and it does not hang about him in the imagination of others, it hangs about him in his own mind ; it is truly said by the poet “ *Abstract what others feel—what others think.*”

In order to make men social, it has pleased God to put into our minds an invincible sensibility

towards our fellow creatures; take away that, and it destroys all that which is the source and foundation of happiness; when, therefore, this Noble person had this communication made by a confidential friend of the defendant, a relation of his; then he felt what it is impossible I can have any powers to describe; and I can tell the Gentlemen; till I hear it contradicted by evidence, I must give the Noble Lord credit for having the object in view which the Noble Lord declares he had, and must have, if he felt himself vulnerable in any respect in which a gentleman can consider himself so; there was no disposition in those who brought the charge to carry it further than to operate upon the person upon whom it was made; so that he might not be in a condition to bring Mr. Gawler before the court; he might have continued among others not being so charged as a man possessed of reputation; but he felt his own innocence, and he was resolved to place himself in the situation in which he stands:—the situation in which he places me, as his counsel, is not that I have had recently an opportunity of expressing, and is not a pleasant one by any means—human nature shuns the touch of persons even whose names are contaminated by such an imputation; one rather wishes to brush away from ones memory that there are such things to contaminate mankind, but if, indeed, any thing of that sort is to be insinuated in the course of the day, I am prepared, and ready to meet it.

Gentlemen. Lord Valentia, after the most cool and deliberate consideration, came forward publicly in the face of this court, and privately in the face of his counsel; and by solemn protestations in one quarter, accompanied with oaths equally solemn in the other, denied, as he does by me, in the most positive manner, every imputation which can fasten dishonor on his name; he denies with equal solemnity, but with what truth, Gentlemen, will be to be enquired into; he denies, solemnly, ever having had such a charge, or insinuation made against his name; it defied all his knowledge, and all his endeavors to recollect it have been completely disappointed; for not until he was stirring himself to bring down the vengeance of the Law upon those who had injured him, is an attack made upon him, unparalleled in its nature, and which shews to what a degree women can be seduced: an attack is made upon him, in the public face of day, in which is every thing that is horrid and detestable, and which, if it can be fastened upon him to day, I will give up the cause; which if it can be fastened upon him to day, by any evidence which comes not from a suspected quarter, I will join in stigmatizing him as the worst and wickedest of mankind; and though it will not alter the moral character of the defendant as far as the adultery goes, it will not entitle the plaintiff to any damages.—We do not sit here to teach morality, but to punish wrongs; we sit here to teach morality as far as a verdict, justly given,

will teach it, and which, I believe, will teach it better than it can be taught by any writer or author.

Gentlemen. If I am mistaken, I shall, with indignation, turn all which I am now turning upon the defendant, upon the plaintiff; and I give my client public notice, I will turn it with equal impression upon him; but, on the other hand, if this attempt should not be made; or if made, it shall not be supported by evidence, which ought to be strong in correspondence with the nature of the imputation; if it shall be made by evidence that carries along with it the answer; if it shall be made by evidence which proves what I have been stating to you, instead of resisting what I have stated; if it proves to be a conspiracy instead of fastening dishonor upon the plaintiff; then gentlemen, I shall take the liberty, unqualified as I stated myself to be with respect to talents, to comment a little upon it when I come to reply—I feel I can hardly bring myself up to that state of animation which is necessary to affect you—and yet, thank God, I possess such a moral feeling; I possess such a regard for society, such a desire to see them proceed into that harmony which constitutes the advantages of community, and gives happiness to every man; that I flatter myself, if your verdict is not what it ought to be in that respect, the fault shall not be mine; at present I shall con-

tent myself with having said on that part of the subject what I have said.

Gentlemen. I have heard of cases with a double aspect which we sometimes express a *double hatched fraud*. I do not know how we are to be assailed, in that respect, if there is a failure of truth in the charge which I have been alluding to, if the charge is abandoned, or if not abandoned, it is mixed up with another, totally different, you will determine accordingly; if the husband's right to damages is to be impeached because he has been free with women, and amorous, I shall have a word to say upon the decent consistency of such a defence;—if it shall be stated, he saw that his wife was in a train of being debauched, but that he looked on and saw it, and that he chose to see it, and was willing to endure it, I will not believe it, nor will you; I know the adulterer's course, I have known it too long; there are particular systems which are as well known in society by those who are obliged to see them, as the countenances of men are distinguishable; and nothing but long experience enables a man to detect them; my learned and able friend who sits by me has had various opportunities of detecting fraud, which we cannot have; he has had more beneficial experience in the early part of his life in the criminal courts of justice; which enables him daily to see the system of fraud practised: not that he knows

the particular individual, but he knows he is of a certain class and an adept in vice; and when you know the class, you can follow them through all the windings of it; so it is with the adulterer—I know the adulterer's course, and it is his constant course after he has dishonored the woman,—after he has dishonored the husband; then he enters into a conspiracy with the woman, who must best know her husband, who knows all the little infirmities which attach themselves upon the best of human nature; he takes the husband up from his childhood, he runs through his life, he magnifies every circumstance, he distorts every common incident that belongs to him, and having collected them together, he lets them out like a volcano against the party who comes to complain; but sometimes it happens that the volcano bursts a little too soon, and the powder-plot is now and then discovered by a match being put to it before the parties meant it; so it is here.

Gentlemen. I am sorry to be obliged to observe; for my experience in this place warrants me in the observation; there has not been an instance, except where it has been an undefended cause, of an attack more cruel, more injurious, or more wicked than that which gave birth to the action which is now before you. Whether it is to be supported by the same charge, or not, I do not know; if Mr. Gawler can put himself in that situation I have last described him, let him, if he pleases; but only

let him recollect it will be impossible for him with all the ability with which he is assisted, to withdraw himself from the situation I first placed him in; namely, a man in whom the plaintiff reposed great confidence, the breach of which is a disgrace, greater, perhaps, if possible, than that he is called upon here to answer; and unless the evidence shall call upon me to say my Lord Valentia has deceived me, that he has convicted himself, that he has deceived me, that he has thrown away this lady by his own conduct, and has rendered himself unworthy of her by his own bad habits, I certainly shall, when I have the honor to address you again, insist upon the topics, which I have, at greater length than I originally intended to trouble you with.

(ROBERT PHAYRE, ESQ. *sworn.*)

Mr. GARROW, Q. I believe Sir, you are related to Lord Valentia, the plaintiff?

A. I am Sir.

Q. Was you present at his marriage with his lady?

A. No, I was not.

Q. I believe you have examined the register.

A. Yes, Sir.

Q. Have you got it?

A. Yes, Sir, (*produces it*)

Q. Is that a copy of the register from the parish of Powderham?

A. This is a copy of the register.

Q. Did you examine it yourself?

A. I did, Sir.

(The Register read.)

Q. Do you live in the neighbourhood of my Lord Valentia's seat in the country?

A. I was at his house for some time.

Q. Was that soon after the marriage?

A. It was in March 1792, I went there; the marriage was in 1790.

Q. Will you be so good as to tell us how long you was there.

A. I was there from March till December following.

Q. Living in the family?

A. Frequently, I went away and came back.

Q. Will you be so good to inform my Lord and the Jury, from what your observations furnished you, whether Lord Valentia appeared to be an indulgent, affectionate, and attentive husband;

A. I think a very attentive, indulgent husband, during my residence there.

Q. You are acquainted with, or have seen I believe, Mr. Gawler, the defendant?

A. I have.

Q. You are acquainted with his brother Mr. Henry Gawler?

A. I am.

Q. Were they very intimate with Lord Valentia, do you know of your own knowledge?

A. Yes I do; I understood they were.

Q. Had any of them any management of his concerns?

A. I understood Mr. Henry Gawler was one of his trustees.

Mr. GIBBS. If you mean he had the management of his affairs, we will take it when you produce the settlement.

Mr. GARROW. Q. Have you seen Mr. Gawler since Lady Valentia left her husband—had you any occasion to see him at the chambers of his brother?

A. I saw him there as well as I recollect last November at his brother's chambers.

Q. That was long since Lady Valentia left her home?

A. Yes, Sir.

Q. Will you tell us whether Mr. Gawler the defendant, said any thing in respect to any intercourse with Lady Valentia?

A. He acknowledged to me that he had.

Q. Was it expressed coarsely;

A. It was rather a very indecent expression.

Q. Did he communicate that he had a criminal intercourse with Lady Valentia?

A. He did.

CROSS-EXAMINATION.

M. GIBBS. Q. You were at Areley in March 1792, from March to December backward and forward?

A. I was, Sir.

Q. During that time, Lord and Lady Valentia lived perfectly happy?

A. They appeared so to me.

Q. No complaints?

A. I did not hear any.

Q. Repeat that, will you, Mr. Phayre?

A. I did not hear any complaints during my residence there.

Q. Heard you none?

A. There were sometimes *gusts* of passion in Lord Valentia, but nothing particular that I could see; every man is liable to passion, I believe.

Q. Certainly, we all feel enough of that, I believe—will you be so good as to tell me, Mr. Phayre, when this conversation passed that you have been speaking of?

A. As well as I recollect, it was last November

Q. I wish you would recollect as near as you can the time?

A. I think it was November; I came to Town the latter end of October.

Q. What relation are you to Lord Valentia?

A. First cousin.

Q. Was any body there but yourself?

A. Mr. Henry Gawler was present.

Mr. GARROW. Q. Are you quite certain; or can you make any mistake about this declaration in November?

A. No, I do not think I can make any mistake about it.

Mr. GIBBS. You do not *think* you can?

(Mrs. PHAYRE. *sworn*).

Mr. BEST. Q. I believe ma'am you are the wife of the last witness?

A. I am, Sir.

Q. You are acquainted with Lord Valentia, the plaintiff?

A. I am.

Q. Were you at any time upon a visit at Lord Valentia's?

A. I was.

Q. At what time?

A. In the year 1792, I believe, I went there.

Q. Did you stay any time there?

A. Some months.

Q. How many, pray ma'am?

A. Seven months.

Q. Was Lord Valentia there during your visit generally?

A. He was.

Q. And Lady Valentia, likewise, I presume?

A. Yes, Sir.

Q. Now ma'am, from what you observed of Lord Valentia's conduct towards his lady, did he appear to be an affectionate tender husband?

A. He did.

(Mrs. MARY KENIMORE, *sworn*)

Mr. ERSKINE. Q. I believe you live at present in the family of the Earl of Stamford?

A. Yes, Sir

Q. You attend upon his Lordship's daughters Lady Emilia and her sister?

A. Yes, Sir.

Q. How long did you live in the same situation with Lady Valentia?

A. Four years and a half.

Q. I believe you was with her at the time of her marriage, and was present at it?

A. Yes, Sir.

Q. During that four years and an half, did you constantly live in the family?

A. Yes, Sir.

Q. Do you remember Lord Valentia going abroad?

A. Yes, Sir.

Q. From the time of Lord Valentia's marriage up to the time when he left England, when you had an opportunity of seeing him, had you any opportunity, from the situation you was in, of observing his behaviour to Lady Valentia?

A. A good deal.

Q. Will you be so good as to state, to my Lord and the Jury, whether my Lord Valentia's conduct was kind, affectionate, and attentive?

A. I always thought it so.

Q. Did he appear to you to make a good and kind husband to your mistress?

A. I always thought so.

Q. Did it appear to you, from what you observed, that she thought so?

A. I never heard her complain.

Q. Did Lady Valentia place any degree of confidence in you as a servant attached to her?

A. Yes, Sir.

Q. Lady Valentia placed confidence in you as a servant attached to her?

A. Yes, Sir.

Q. Did that give you a better opportunity of observing all that passed in the family, and particularly, her attention to her husband and his to her?

A. Yes.

Q. Then am I to understand you, that notwithstanding that confidence, you never observed any thing to challenge the opinion you have delivered here?

A. No.

Q. Did you observe any thing improper in any respect whatever in my Lord Valentia's conduct; or, did he behave properly?

A. I always thought he did.

Q. Had you, at any time, any reason to suspect my Lady Valentia's fidelity towards Lord Valentia?

A. Yes, I had, after he was gone abroad.

Q. Before my Lord went abroad and whilst he was living in the manner you have described, did you know Mr. Gawler, the defendant, and his brother, Mr. Henry Gawler.

A. Yes, Sir.

Q. Upon what footing were they received in the family—as common acquaintance, or friends?

A. As particular friends.

Q. When my Lord Valentia was gone abroad, you say you had reason to suspect the fidelity of Lady Valentia; will you state what the circumstance was that led you to that suspicion, and what you saw.—When Lady Valentia slept as, of course she did, alone, when Lord Valentia went away, did she use to bolt her door at night?

A. Yes, she did.

Mr. GIBBS. Do not lead the witness.

Mr. ERSKINE. Q. When Lady Valentia slept alone, did she use to bolt her door?—I will put that in the House of Lords down to the Quarter Sessions.

Mr. GIBBS. I do not know what is leading if that is not.

Mr. ERSKINE. Q. Did you use to call her in the morning?

A. Yes, Sir.

Q. Before Lord Valentia went away, was the bolt in the same manner or otherwise—was the door used to be bolted?

A. She was not then at her own house; she was at Mr. Gawler's.

Q. When you used to call Lady Valentia, in what condition did you find the door?

A. Always unbolted, but shut.

Q. Before you had reason to suspect any thing?

A. Always unbolted, but it was shut.

Q. Are you speaking when Lord Valentia was with her, or when she was alone?

A. When she was alone.

Q. Where did Mr. John Bellenger Gawler sleep at that time?

A. Opposite her room.

Q. Where was the house?

A. At Rambridge, in Hampshire.

Q. Whose house at Rambridge?

A. Mr. Gawler's.

Q. Is that Mr. Gawler the father?

A. Yes, Sir.

Q. Near Andover, I believe?

A. Yes, Sir.

Q. So that she went to Rambridge when My Lord was abroad?

A. Yes, Sir.

Q. And you accompanied her?

A. Yes, Sir.

Q. He slept opposite to Lady Valentia?

A. Yes, Sir.

Q. Will you tell the Jury what it was you observed that gave you cause to suspect her fidelity?

A. One night after I had left Lady Valentia, undressed and going to bed, I went back to the door, and I heard Mr. Gawler's voice in her room.

Mr. GIBBS. *Q.* You mean Mr. John Bellenger Gawler?

A. Yes, Sir.

Mr. ERSKINE. *Q.* What was your reason for going back after you had left her?

A. I can hardly tell.

Q. You must tell what was your reason?

A. My reason was, I suspected Mr. Gawler was there; I suspected Mr. Gawler was gone to her room by seeing his door open.

Q. Are you so well acquainted with Mr. Gawler's voice as to be able to give your positive oath that it was his voice in your Lady's chamber?

A. Yes, I am.

Q. Did you after that, examine your Lady's bed or before, so as to lead to any suspicion—had you before that examined your Lady's bed?

A. Once before I thought two people had slept in the bed, as there was a division.

Q. Did you remain any time so as to satisfy yourself how long he remained there?

A. No.

Q. But you take upon yourself to swear positively he was there?

A. I can.

Q. Was the door of her chamber then shut?

A. Yes.

Q. When was it Lord Valentia went abroad?

A. I believe it was in February 1794.

(CROSS EXAMINATION)

Mr. Adam. *Q.* Lady Valentia placed great confidence in you?

A. Yes, Sir.

Q. And you said, I think, you had no reason to suspect her infidelity till my Lord was gone abroad?

A. No.

Q. You said that?

A. Yes, Sir.

Q. I would wish to ask you whether you mean positively to adhere to that?

A. Yes.

Q. You understand what I mean; do you mean, positively to say, you had no reason, whatever, to suspect Lady Valentia's fidelity till my Lord was gone abroad?

A. Yes.

Q. That you swear positively?

A. Yes.

Q. Do you mean to swear, ma'am, that there was no circumstance in Lady Valentia's conduct that gave you suspicions in your mind that there was a connexion previous to that time between her and the defendant?

A. Before my Lord Valentia went abroad?

Q. Before my Lord Valentia went abroad.

A. No, any further than I once saw Lady Valentia rise up from Mr. Gawler's lap.

Q. That was before Lord Valentia went abroad?

A. Yes, Sir.

Q. Did that raise a suspicion in your mind?

A. Yes, Sir.

Q. Then pray ma'am, how came you to say you had no suspicion in your mind till you heard Mr. Gawler's voice?

A. It never raised a suspicion of any thing bad or criminal; it made me think she had a partiality for Mr. Gawler, but I did not think it was any thing that was bad.

Q. You resided with Lord Valentia at Areley?

A. Yes.

Q. When you resided there, was Mr. Gawler frequently there?

A. Yes—that is—he was there about twice in the year.

Q. For a considerable time together?

A. No, not for any long time.

Q. Will you be so good to recollect yourself, upon that with respect to the time, the period of time?

A. I cannot tell the time, Sir.

Q. I would wish to know whether Lord Valentia used to leave his Lady and Mr. Gawler in company together in the evening?

A. That I am sure I cannot tell.

Q. Can you tell nothing about the time that Lord Valentia used to retire to rest?

A. No, sometimes I know he used to go earlier, sometimes later—no particular hour.

Q. I would wish to know another thing, whether you never saw any thing at Areley between Mr. Gawler and Lady Valentia which gave you reason to suspect a criminal intercourse?

A. Nothing further than what I have mentioned.

Q. Then if any thing should be told to have passed in your presence it must be false?

A. There is nothing more than what I have said that I can say.

Q. I would wish to lead your recollection then to it—do you remember any thing passing with respect to a letter?

A. No, I do not know any thing particular.

Q. Do not you remember Lady Valentia having a letter in her hand which a person wished to take from her?

A. No, I do not.

Q. Perfectly positive?

A. Yes, I am; there might be such a thing, but I was not present—that did not pass in my presence.

Q. If such a thing should have passed; that is, if Lady Valentia should have had a letter in her hand, if she should have been in bed, and there should have been a struggle to get it from her, should you not have recollected it?

A. Yes, if I had been present.

Q. Then you will take upon you to swear you was not present at any such thing?

A. Yes.

Mr. ERSKINE. Q. Had you an opportunity of observing whether Mr. Gawler, the defendant, by his behaviour appeared to be a friend of Lord Valentia's?

A. Yes, I always thought so.

Q. You say that he used to go to bed sometimes at one time and sometimes at another; I take it for granted, when he retired to rest Lady Valentia did also?

A. Yes, Sir.

Mr. ADAM. Q. Did you live with Lady Valentia when at Rambridge?

A. Yes.

Q. Do you remember Lord Valentia returning from abroad?

A. Yes, Sir.

Q. Who did he come with?

A. Mr. John Gawler.

Q. Did they come down in the same post chaise together?

A. Yes.

Q. They seemed to be intimate together.

A. Yes.

Q. How long did my Lord Valentia remain at Rambridge?

A. A few days, I do not know justly how many. not above 3 or 4 days I believe, I cannot say justly how many.

Q. Are you sure he did?

A. I am not certain of it, but that was quite as much.

Q. What was the reason of Lady Valentia's leaving Areley?

A. The motives of her leaving, was, she was coming to London to go abroad to Lord Valentia.

Q. Do not you recollect the situation of Areley at the time she left it?

A. Yes.

Q. Do not you know there were executions in the house?

A. There were no executions in the house,—there

was a talk of it that there was to be.

Q. Do you know the reason why she went to Rambridge?

A. No, I do not know the reason.

Mr. ERSKINE. Q. I was asking you, a little while ago, whether Mr. Gawler the defendant did not appear to you, from his conduct, to be a particular friend of my Lord Valentia's; to which you answered he did?

A. Yes,

Q. What age is Mr. Gawler the father?

A. I do not know.

Q. Is he an old man?

A. Yes.

Q. And a married man?

A. Yes,

Q. And he lives with his wife and family near Andover?

A. Yes,

Q. My Lady Valentia was at Rambridge in the situation you have described her before?

A. Yes.

Q. And after that time Lord Valentia came down in a post chaise, with Mr. John Gawler, to his father's house?

A. They did not come in a chaise to the house, but they came in a post chaise, and walked up to the house.

Q. Did Mr. John Gawler receive Lord Valentia as his friend and guest in his father's house?

A. Yes, he was received so.

(LADY LUCY MAXWELL, sworn)

Mr. GARROW. Q. I believe you are sister to my Lord Valentia?

A. Yes, Sir.

Q. Did you, with your husband, visit Lady Valentia after the marriage at Areley?

A. Yes, I did.

Q. I believe you was there for some months?

A. I do not know exactly the time; I was there for some time.

Q. From your observation of Lord Valentia's conduct, did he appear to be an affectionate tender husband; or, on the contrary?

A. Indeed he did, he certainly did.

Q. Was he very indulgent to her?

A. He was uncommonly so, indeed, there was not a wish she had, that she had any thing more to do than to express to have gratified.

(CROSS-EXAMINATION.)

Mr. CHAMBRE. Q. While your ladyship was at Areley, did any quarrel arise in the family concerning the conduct of Lady Valentia or Mr. Gawler?

A. There was no quarrel, there was some coolness.

Q. Was the occasion of that communicated to Lord Valentia?

A. Never to my knowledge; indeed, there was a great deal of incivility from Lady Valentia to me

which I attributed to that. I attributed her behaviour to me, to my thinking there was more attention between her and Mr. Gawler than was right.

(Mr. DUGARD, sworn)

Mr. BEST. Q. I believe, Sir, you live at Areley?

A. I do, Sir.

Q. Did you live there at the time Lord Valentia came to settle there?

A. I went to live there about two months before Lord Valentia came to settle there.

Q. Were you acquainted with Lord Valentia at Areley?

A. During the time I lived there, I was.

Q. Did you visit frequently at the house?

A. After; very often.

Q. Have you often seen Lord Valentia at the time you visited there?

A. I generally saw Lady Valentia there.

Q. Are you acquainted with the defendant, Mr. Gawler?

A. I have seen him at Areley.

Q. Did he appear to you to be the friend of Lord Valentia?

A. He seemed to be upon a friendly footing with the whole family; I did not observe any thing particular.

Q. At any time during your visits at Areley, did Lord Valentia appear to you to be an affectionate, tender husband?

A. I observed the conduct of Lord Valentia to Lady Valentia to be truly affectionate at all times.

(CROSS-EXAMINATION)

Mr. GIBBS. Q. You live in the neighbourhood of Areley?

A. About five or six hundred yards from Lord Valentia.

Q. Are you of any business?

A. No, Sir.

Q. You are a gentleman of independent estate?

A. I live upon my fortune.

Q. A country gentleman?

A. I am no kind of business.

(Mrs. DUGARD, sworn)

Mr. GARROW. Q. I believe you resided in the neighbourhood of Lord Valentia, at Areley?

A. I did.

Q. Did you visit there frequently after his marriage with Lady Valentia?

A. Yes, I did.

Q. Did you occasionally pass some days there?

A. Yes, I did.

Q. In my Lord's family?

A. Yes, Sir.

Q. You had opportunities, therefore, of observing his conduct to his Lady?

A. Yes, I had.

Q. From all that you observed, did it appear to you that he was a kind, affectionate, indulgent husband; or the contrary?

A. I always thought he was.

Q. Did that proceed from the observation of his conduct.

A. I never saw any thing to the contrary.

(Mr. MAXWELL, sworn)

Mr. ERSKINE. Q. I believe you are the son of the *Bishop of Meath*, in the Kingdom of Ireland?

A. I am, Sir.

Q. You are the husband of the lady who has been examined, *Lady Lucy Maxwell*?

A. I am.

Q. In consequence of your near connexion with Lord Valentia, was you frequently in his family?

A. Very frequently.

Q. Will you state to my Lord, and the Jury, what length of time you were with my Lord and Lady Valentia?

A. The times that I have been there have been various; they have been at different periods: at one time, I believe, I was about six weeks, or so; and at other times, I have been six days, but constantly in the habits of intimacy; they visited me, in Ireland, when I was at my house; and also, at my father's, the Bishop's; and we came to their house at Areley.

Q. In short, a reciprocal intimacy?

A. Yes.

Q. Now, Sir, I ask you, upon your oath, in what manner did Lord Valentia conduct himself to Lady Valentia?

A. From the whole of my observation, I do not think I ever saw a man more attached to a woman in my life than he was to his wife : in that, I am far from saying, that those little passions which may sometimes interrupt the harmony of the best of families did not exist: I have had great opportunities of observing; and he has placed the greatest confidence in me, and I never saw a man more attached to a woman in the course of my existence, than he was to his wife.

Q. Was that followed by indulgence and kindness?

A. Clearly so, to the prejudice considerably, of his fortune, which is very much involved now.

Q. Previous to that time, did she meet that attachment?

A. When he was in Ireland, which was soon after his marriage, my Lady Valentia appeared to act with regard to him, with a considerable degree of attachment.

Q. After Mr. Gawler had been some length of time acquainted with Lady Valentia, did you observe any thing particular in Lady Valentia's behaviour?

A. I clearly observed after he had been sometime in the house, that her conduct, both to Lord Va-

lencia, and to all his friends and connexions, considerably altered.

LORD KENYON. Q. Where was this?

A. At Areley, that was in the summer of 1792.

Mr. ERSKINE. Q. Can you state, from your own observation, on what footing Mr. Gawler was received by my Lord Valentia when he was at Areley?

A. He was received always in the most friendly, and most confidential manner that you can possibly conceive a man to be received.

Q. During the times that you have had those various opportunities of seeing them, did Mr. Gawler, in my Lord's presence, ever conduct himself in a way that could lead him to suspect the fidelity of that friendship?

A. Clearly not, in his presence; nor indeed at that time would his conduct in his absence when my Lord Valentia was away, have impressed me with his intentions had I not had some previous knowledge of Mr. Gawler's character.

Q. Had you any reason to believe that Lord Valentia considered him in any other light than as an affectionate friend?

A. I have no reason to think he considered him in any other light whatever.

Q. You never saw any thing that would have given him any reason to suspect it?

A. Certainly not.

Q. Was Mr. Henry Gawler the brother of the defendant received as a guest in the family?

A. I cannot speak to that, I never saw Mr. Henry Gawler in my Lord Valentia's house.

(CROSS-EXAMINATION)

Mr. GIBBS. Q. You have been speaking to what passed at Areley in 1792, that was the date I think you yourself gave the transaction?

A. Yes, it certainly was so, as far as I can recollect dates.

Q. It was so, you are not wrong, you say from your previous knowledge of Mr. Gawler's character you suspected him with my Lady Valentia; I have not misunderstood you hitherto, you said from your previous knowledge of his character you did suspect him with Lady Valentia?

A. I did not say any such thing.

Lord KENYON. I will tell you what he said; that the defendant never conducted himself in any manner in his presence to create suspicions, nor would the witness, from his behaviour, have been impressed with his intentions, had he not had a previous knowledge of his character.

Mr. GIBBS. Q. Do I now understand you. I apprehend you to have said, that although if you had not known Mr. Gawler's character, you should not have entertained suspicions, yet knowing his character, and coupling that with what you observed you did entertain suspicions?

A. I certainly did entertain suspicions of his designs, but not of any criminal intercourse at that time.

Q. Did Lord Valentia know Mr. Gawler's character?

A. He certainly did not know his character, I believe.

Q. Was he as well acquainted with him as you was?

A. Certainly, he knew him very intimately.

Q. You seem to have had a perfect knowledge of his character?

A. I will tell you the reason.

Q. Tell me the fact and you shall have an opportunity of telling me the reason hereafter?

Mr. GARROW. My Lord, I submit the witness has a right to give his reason.

Mr. GIBBS. I am not irregular. Did you communicate that yourself to Lord Valentia, your brother-in-law?

A. I did not.

Q. Then, Mr. Maxwell, from what you knew of Mr. Gawler's character, and from what you observed, you thought he had intentions upon Lady Valentia; and thinking so, and being Lord Valentia's brother in law, you did not communicate your suspicions to him?

A. I did not, and whenever you ask me, I will tell you my reasons why I did not.

Q. You shall tell them presently—now if you please.

A. I had thrown out to my Lord Valentia, once or twice, a general opinion relative to the Gawlers, including the whole family; and I found the expressions of confidence he made use of with respect

to the whole of the family, especially to the old gentleman and his son Harry.

Q. Any relative to the defendant?

A. He spoke generally—I told him the Gawlers would be his ruin, and he entered into so very warm a vindication of their conduct in opposition to aspersions that had been thrown out against them, and seemed to take their part so strongly, that I thought it would be in vain for me to endeavour to impress his mind with the evil intentions of the defendant, and, more especially, as the defendant left the house before I did myself—I then thought the danger was over, and I did not like to embroil myself in a fruitless endeavour.

Q. Then Mr. Gawler had left the house before you had this conversation about the Gawlers?

A. I declare, I cannot charge my memory whether he had or not.

Q. You said so just now?

A. I said that was my reason for not communicating it him, because he left the house—that was one of my reasons; besides, I had no positive proof.

Q. A man does not require positive proof when he communicates a suspicion of that sort to a brother in law—then, Mr. Maxwell, you communicated to Lord Valentia all the suspicions you had about the Gawlers, except that which related to the honor of his wife?

A. I certainly did exactly what I told you.

Q. Then, is not what I say true, that you communicated all the suspicions you entertained about

the Gawlers, except that which related to the honor of his wife, and your sister in law ?

A. I did, and I found them so ill received, I never did communicate it; he received my information so ill, there was a considerable coldness between us for some time. I never did in my life tell him, till long subsequent, nor do I believe any one else did.

Q. You said, I think, Mr. Maxwell, that after the defendant, Mr. Gawler, had been in his house sometime, you then perceived Lady Valentia's conduct both to Lord Valentia and his friends was much altered ?

A. To his family, I meant, those only were of the family that were then present.

Q. Do I understand you right in that ?

A. I certainly did say so.

Q. And this was in the year 1792 ?

A. This was in the year 1792; so much so, that she was, as I thought, rude, both to Lady Lucy and me.

Q. In consequence of your interference about them ?

A. No, if you ask me, I think it was in consequence of the influence of the defendant, and wishing to get us out of the house.

Q. I ask you as to facts, it struck you so at the time ?—there had been no conversation between any one and Lady Valentia upon the subject ?

A. I should imagine not, it is impossible for me to answer that.

Q. Then you think no one had let Lady Valentia see they had observed any intimacy between them?

A. I should imagine not, clearly.

Q. You do not suppose there was any one of your family that attributed her coolness to that—that any of your family who were treated coolly by Lady Valentia attributed the coolness to that?

LORD KENYON. I cannot take suspicions.

Mr. GIBBS. Q. After the conversation you have been speaking of?

A. It was some time in the summer—towards the Autumn, I should suppose. It might be about August or the latter end of August.

Q. Then you went to Ireland?

A. Yes, Sir.

Q. This was after they had been on a visit to you in Ireland?

A. It was.

Q. When did you return to England again, Sir?

A. I do not know, I suppose it was in the summer following.

Q. You was not with Lord and Lady Valentia then.

A. I was at Areley then.

Q. For any time?

A. For one day I believe; Lady Lucy was not with me.

Q. Were you not there in June 1793?

A. I believe that is the time.

Q. Was the defendant, Mr. Gawler, there at that time?

A. He was.

Q. In June 1793 ?

A. If that was the time I was there, he was there.

Q. I believe you and Lord Valentia went away together did not you ?

A. Yes, Sir.

Q. Lady Valentia was also there ?

A. Lady Valentia was also there.

Q. Did Lady Valentia go away with you ?

A. No.

Q. Did the defendant go away with you ?

A. No.

Q. Then Mr. Gawler and Lady Valentia were left there, were they ?

A. Yes, with many other people, there was, as well as I recollect, Miss Coburn ; I am not quite positive, but I rather think so ; there were Madam De C——, Mademoiselle De C——, and, I declare I do not know whether there was any one else or not besides the defendant and Lady Valentia, and I am not quite certain whether Miss Coburn was there.

Q. You remember Lady Valentia and Mr. Gawler were there ?

A. Yes, I do, and I recollect also, a particular reason for my pressing Lord Valentia to come to London with me.

Q. You pressed him to come with you ?

A. I did, upon particular business which he could facilitate for me, which was to receive a large sum of money from off his estate.

Q. You had not been with Lord Valentia from June 1792, to June 1793?

A. I cannot be positive as to dates; I was not with Lord Valentia from 1792, until the time when I came over to receive Lady Lucy's fortune; then I called at Areley for him to come up to meet Mr. Robert and Mr. Henry Gawler to facilitate my receiving the money, and to urge them to delay me as little as possible from Ireland.

Mr. ERSKINE. Q. Do you know from those circumstances there was a connexion with the trust and management of the estate?

A. Indeed I do, for I had various communications on the subject.

Q. Do you include the defendant?

A. No, I do not, in pecuniary transactions, his transactions were of another sort.

Q. You can tell us why Lord Valentia went abroad?

A. Clearly, it was on account of the embarrassment of his circumstances.

Q. I want to see the amount of this. In the month of June 1793, Lord Valentia lived at Areley, then he went upon a sudden call to London at your instance.

A. At my instance.

Q. And he did not break up his establishment, but left his friends there?

A. Yes, Sir.

Q. He went back again?

A. Yes, before I did.

LORD KENYON. *Q.* In 1792, how old was Lord Valentia.

A. He was past 19 in the year 1790, therefore he must be near 21.

Q. How old was the lady?

A. Sixteen years and a half in 1790, therefore she must have been near 19.

Q. How old was Mr. John Gawler?

A. I lived in the same set he did formerly, though I was not intimate with him, I should imagine Mr. Gawler must be about four or five and thirty.

Mr. GIBBS. *Q.* Do you mean then or now?

A. Upon my word, he is that kind of person it is difficult to judge of his age.

(Mrs. BEVER, sworn)

Mr. GARROW. *Q.* In what family are you at present?

A. I am not in any family now.

Q. You was formerly housekeeper in the family of Lord Valentia?

A. Yes, I was.

Q. Was you so from the time of my Lord's marriage?

A. Not from the time of his being married, only when he settled at Areley.

Q. Did you live as housekeeper during the whole of his residence at Areley?

A. No, I did not, one year only.

Q. What year was that?

A. I went in February 1792, I was there from February 1792, till the year 1793.

Q. During the whole of that time from your observation of the conduct of my Lord Valentia, did he appear to you to be an affectionate husband, or the contrary?

A. A very fond and affectionate husband I always thought him.

Q. Did you, during the whole time you lived there, observe any thing to alter that?

A. Never, I always thought him very good indeed.

Q. Did you leave the family with that impression upon your mind of his conduct and character?

A. I certainly did, Sir.

Mr. ADAM. I shall not ask you any questions.

Mr. ERSKINE. We have done my Lord.

DEFENCE.

MR. GIBBS. *May it please your Lordship—Gentlemen of the Jury,*—It cannot have escaped your observation, that my learned friend in the very proper, judicious, and energetic address he made to you upon this case, enlarged extremely upon facts that arose in the cause of another judicial enquiry between the parties, one of whom was not the Defendant.

I am, in this case, Counsel for the Defendant, Mr. John Bellenger Gawler, and my learned friend has not attempted either in the address he made to you, or in the evidence that followed that eloquent address, to connect Mr. John Gawler, the Defendant for whom I am Counsel, with any part of that transaction, not that I, at all, complain of him as Counsel for Lord Valentia, taking the opportunity which presented itself to him, of enlarging upon that case; for he stated truly to you, that, let that charge be what it may, I have nothing to do with it here; that it had been brought against Lord Valentia, and was answered by Lord Valentia in the course of judicial enquiry, and that he had, in effect the judgment of this court in his favour.

Meaning, as I do, to rest the defence of Mr. Gawler upon no such thing, I hold myself bound to make this declaration, that Lord Valentia stands as a man who has answered upon his oath, a charge that was brought against him; I hold myself bound to make this declaration in his favor, that he has purged himself, upon oath, from that charge, and there this matter rests.

Gentlemen, the defence which I have to make in this case, as you must have collected from part of my Cross-Examination of one of the witnesses, particularly the last, Mr. Maxwell, is of a very different sort indeed.—My learned friend and I agree in the principles which he has laid down, and which I shall lay down to you, both of law and morality.

God forbid it should not be open to an husband to bring an action of this sort, against the unlicensed invader of his marriage bed! I agree, that, under certain circumstances, a man, seeking reparation for that which may be the greatest injury a man can receive, is entitled to exemplary damages; and, I hope, will always receive them when he makes out a fair case to the satisfaction of the Jury, whose province it is to assess those damages.

Gentlemen, I know not whether I go too far in admitting, that a jury cannot take a better measure of the damages they ought to give to the plaintiff in such a case, than by ascertaining them by the feelings of the plaintiff himself, by making him the judge of his own cause, by saying to him, the injury you have received is the keen sense of the wrong done to you, and to the extent it shall appear you feel the wound you have received, to that extent we will as far as in our power apply the remedy.—Do I not give ample scope to the claim the plaintiff has in an action like the present? But Gentlemen, as the plaintiff's damages are aggravated by the keen sense he has of his situation, and by the manner in which he feels the wound which he complains of the defendant has inflicted; so, on the other hand, may they be very much lessened by the misconduct of the plaintiff himself; not only may they be lessened, but it has been solemnly decided in this court in which my Lord presides, that they may be entirely cut from under his feet, by his own misconduct.

If it should appear to you, Gentlemen, the plaintiff who seeks a recompence at your hands for the injury, is himself a most licentious, abandoned, and profligate character; if it shall appear to you, that having just and well founded suspicions of the man against whom he afterwards commences an action, he not only leaves his wife unprotected, nay uncautioned against attacks, but he even leaves opportunities in which that may be effected which he knew was in the mind of the defendant, (although I do not say that is a case) that will cut from the plaintiff the ground of his action, and not leave him any thing to stand upon; yet, in a case such as that is, and I shall presently state to you that case; it takes from him his claim to any thing like considerable damages and only leaves him in the possession, after it has been proved, of your verdict, and the poor triumph that attends it.

But, Gentleman, there is a case in which his right of action is taken from him, where the husband winks at the dishonor of his wife, where he agrees at the time to the adultery which he afterwards complains of, and at the misconduct of his wife, for which he seeks to have damages.—That is the case in which, as I before stated, the plaintiff shall recover no damages whatever; that his right of action is cut from under his feet, because, as was said by my Lord in the case of *Duberly and Gunning*, it would be the grossest reflection on the law if it did not go hand in hand with morality.

(Reads LORD KENYON's Observation on the above-mentioned case.)

What, Gentlemen, if I should prove to you, that the plaintiff, Lord Valentia, not long after his marriage with this Lady, having a pique against those who would inherit the estates of his father Lord Mountmorres, supposing there were no heirs raised by him; what if I should prove that he had repeatedly declared he wished for heirs to defeat the Cavendish's, and, so as he had them, he cared not who got them? There is not a great deal in that you will say, if it stood alone, it would be loose, it would be profligate, it would be foolish evidence of a depraved mind; it might be said this was joke, it was jest—that he was jesting with the person of his wife, that it did not occur to him it was an indelicate thing to say that heirs might be raised from her body by the assistance of another man—There is not a great deal in that, it will be said; but what if after a son is born, the same gentleman shall be proved to have declared publicly that he knew that was not his, but that it was the child of the man against whom he now brings this action?—Can that be jest! Can human depravity come up to that! Can you suppose a man so depraved to female delicacy—and female delicacy is the delicacy of a man when he is connected with an amiable woman—Can you suppose a man so dead to shame, so insensible of the sweets of a connexion with a virtuous woman, whose character is fair with the world, as that he could bring himself, so to speak,

if he had not attained the last stage of prostitution — If he could so speak of a woman out of whom he wished to see issue whether by himself or others ; and, after a child was born, he should openly declare he knew it was not his, but that it was the child of the man against whom he brings this action ? But, gentlemen, those declarations may have been made, and may have been perfectly innocent. What can exceed the resentment an honorable man feels at knowing that marriage bed which he hoped would always receive his and his wife's chaste bodies ? What resentment must he feel against the invader of that bed, if he had enjoyed or looked forward to that sort of happiness in it, when he has discovered it ; when he has reason to believe that the child born in that bed was the produce of an adulterous embrace ? Nothing can exceed that—I can conceive him exclaiming, “ This child is not mine ; I am a miserable man, “ because I had laid up my soul in this woman's bosom ; I relied upon her for all happiness, and I “ have now a child which is the child of another.”

GENTLEMEN. If that had been the conduct of Lord Valentia, the world would have given him that only as a recompence, which, circumstanced as he would then have been, he could have received ; but this was in the wantonness of the table ; this was sporting with the situation of his wife at table after dinner ; and you will find he has bandied about her name at places the most disgraceful for him to have entered, as a married man—He has stated, not to

one particular man, but he has held conversations concerning the defendant, most disgraceful to himself, and such as take from him the title to a recompence for that he complains of. I told you, if when he discovered that this child was not his, he had expressed resentment against the adulterer, had discarded him from his company, had expelled him from his house, had treated him as a man against whom he should immediately send forth the vengeance of the law, these observations there would have been no necessity for; but he continues him among his most intimate friends, he receives him at his house, he suffers his wife to receive him at the house, no breach of confidence, no breach of communication, no interruption of the intimacy which Mr. Maxwell has stated to have existed between the plaintiff and defendant when he knew he had been between his sheets, the same intimacy, the same acquaintance, the same familiarity, existed afterwards.

I have led you, Gentlemen, through two stages of that misconduct of the plaintiff—his declaration before he had a child, and his declarations afterwards, that he knew that the child was not his. What should you think Gentlemen, if, after that, I should prove to you, that in a mixed company, in the company of several persons, he spoke publicly of this as a thing known; that Mr. Gawler, with whom he was then at dinner, whose intimate acquaintance he then was; and he spoke it publicly

at dinner, or after dinner, be that which it may, that he knew he had had a connexion with his wife but it was a thing not to be talked of publicly—What! the husband profess that he knows the defendant has connexion with his wife! sitting down at the same board with him, conversing upon such a subject, and stating it was not a thing to be talked of so publicly. Will his lordship tell you that a man who has declared his knowledge of this act of adultery, who has kept up his acquaintance with the adulterer, who has encouraged him to keep in habits of friendship with himself, and wife, who has given him repeated opportunities of repeating those acts—will his lordship tell you that does not furnish a compleat answer to the action? That that which was done by the defendant was done by the consent, and by the connivance of the plaintiff, and therefore, he shall not be relieved in a Court of Justice for that which out of his own mouth is proved to have been known to him.

GENTLEMEN, I have carried you through this conversation at table upon the subject, and, I vow to God, I am almost ashamed to repeat what follows.

Lord Valentia, with his riotous companions, of whom the defendant Mr. Gawler was one, went afterwards to a public brothel, and at that brothel, it will be proved to you, that Lord Valentia used terms which, really from shame, I do not repeat,

they are so gross: he cautions Mr. Gawler not to contract an infectious disease lest he should communicate it to his wife—I vow to God, after all that I have heard in this court, of profligacy and licentiousness, after all the cases which my learned friend has so eloquently displayed, and which have been followed by such exemplary verdicts, I vow to God, after all those cases, I thought I had heard the extent of human profligacy; but I never heard any thing that equalled this;—the husband of a beautiful young woman, who now seeks to recover damages for adultery, who goes with the defendant, and others his companions, to a public brothel, states in that brothel; I do not say in what terms but in effect, that he had committed adultery with his wife, and states he expected it to be repeated, he does not caution him against the adultery, but states in terms “I know you have committed adultery with my wife, I know you will do it again, therefore I caution you here not to contract an infectious disease which you, by possibility, may communicate to my wife”—is that a man to seek recompence at your hands for that which he pretends to be an injury? will you feel for a man who feels nothing for himself? God forbid I should on any occasion wish to lessen the injury which the real injured husband sustains upon an occasion like this—his feelings are sacred; they are always respected by those Juries before whom they are brought; they are always, and will always be respected by your Lordship, who presides, and who always, in these cases, gives

fresh effect to the reply which my learned friend has upon all former occasions made to Juries.

But did there ever exist such a case; does the history of the law furnish us with an instance, does your memory or recollection of that, which you have ever heard from others, furnish you with an instance of a man who had publicly professed he knew his wife had committed adultery; that he knew she would afterwards repeat it with him, and yet who demands in a Court of Justice damages for that which he countenanced himself, and which, therefore, he has no right to complain of?

Gentlemen, even upon the case made by the plaintiff, some observations arise which are mainly fortified by the case I have stated.

The persons who have been called are chiefly the relations of my Lord Valentia; one of the chief, was Mr. Maxwell his brother-in-law. Mr. Maxwell states himself to have lived in the same sett with Mr. Gawler, and he stated something about Mr. Gawler's character, tossed in for aggravation of the case; but mixed up with that, he tells you as early as the year 1792, when these parties were at Areley, knowing what he did of Mr. Gawler's character, and coupling it with what he observed of Mr. Gawler's conduct, he had no doubt but that Mr. Gawler had designs upon Lady Valentia; and you recollect that Lady Lucy Maxwell the wife of that witness, being before called

to prove the good terms upon which they lived; stated to you that she had perceived so long ago as 1792, improper conduct between my Lady Valentia and Mr. Gawler; and she said there was a coolness on the part of Lady Valentia, which she attributed to her having observed too great an intimacy between the defendant and Lady Valentia—this was in the year 1792. Mr. Maxwell assigned as a reason, which he felt it necessary to assign; I asked him whether he had communicated it to Lord Valentia. No, says he, and I will tell you my reason why I did not; it came as quick as the answer to the question, and his reason was, that he had talked to Lord Valentia upon the subject of the Gawlers' conduct, and he had defended them, and from the manner in which he did it, he did not believe that Lord Valentia would have given credit to the suspicions, which he, Mr. Maxwell, entertained—Gentlemen, this is very extraordinary conduct, indeed, for a gentleman, holding the situation, in life which Mr. Maxwell holds, to pursue.

I am not accustomed to the manners of the young Men of Fashion of this Age; I am not acquainted with their principles; I do not know the rule of morality by which they guide their actions; but it does appear to me most unaccountable, that Mr. Maxwell having such an opinion in his mind that the Gawlers did not well manage his affairs, and that the defendant had designs upon Lady Valentia's honor, that he should not communicate his suspicions to Lord Valentia; but he never threw out a hint of his appre-

ensions of that, which, if Lord Valentia is the man he has been represented, was a point of infinite more importance than any thing else to him. I cannot reconcile that to any principle of morality I am acquainted with ; Mr. Maxwell perhaps may.

Gentlemen, in 1793, Mr. Maxwell is in England; he goes down to Areley; and, in 1793, he finds there Lord Valentia, Lady Valentia, the defendant Mr. Gawler, and three Ladies; that is the party; no business of Lord Valentia's called him to London, but Mr. Maxwell himself had particular business in London, on account of which he was desirous of carrying Lord Valentia from Areley; the urgency was Mr. Maxwell's; he wanted to have his wife's fortune paid off; the real fact was this, Mr. Maxwell wanted to receive Lady Lucy Maxwell's fortune; he goes down the place where Lord Valentia was with Lady Valentia, the defendant Mr. Gawler, one English woman, and two French ladies; he desires Lord Valentia to go to town with him, and although in 1792, he had himself entertained those suspicions, yet, Mr. Maxwell, in 1793, carries him from his own house, and leaves Lady Valentia and the defendant alone in that house; for there were but those three women there. It is too much, perhaps, to say alone; but however, he leaves her there without a protector, and never even then hints those suspicions which he states he had before entertained. Throughout this case, even upon the case of the plaintiff, can you believe that, somehow or other, some caution

had not escaped them to Lord Valentia? Can you believe upon this case, that Lord Valentia had not been guarded against Mr. Gawler; or, at least, those who say they gave him no cautions, saw very plainly he did not want them. It is said he was an affectionate, tender, good humoured, and indulgent husband—Those are the manners of such husbands, those husbands who wish to take their own way themselves, and that their wives should be permitted to take theirs, must do it by indulgence; that is part of their system; and it was part of his system that he should go his way and she should go hers; and it is evident that Mr. Gawler himself did not know better what was going on than Lord Valentia himself knew.

Gentlemen, it has been stated, that in January, 1794, Lord Valentia, from the embarrassment of his affairs, was obliged to go abroad; and it is proved, by the witness who is called by the plaintiff, that about April, 1794, between that time and Lord Valentia's return, executions, it had been apprehended, would be put into the house at Areley; and that was the occasion of her leaving the house. She was left without money, without the means of getting it, and Mr. Henry Gawler was certainly a trustee, at that time, in the family settlement that followed the marriage articles; the house at Rambridge was offered to her as a temporary asylum; to that house she went, and it was not till May, 1794, that Lord Valentia returned from abroad. He first came to London, and in London he called upon Mr. Henry Gawler, and

he found the defendant Gawler either there, or at some other place; it was proved by the witness Kennimore that he carried him down to Rambridge, to Mr. Gawler's house; but that was not unnatural if there was no other circumstance attending it, it was not unnatural that Lord Valentia should, while she was in the house of Mr. Gawler, carry him down; it would be idle, it would be disgraceful to charge that as a crime in him if it stood alone; but, gentlemen, at that time, there was in Mr. Gawler's house, a Clergyman of the name of Bailey, who has a curacy in that neighbourhood, and who was frequently at that house; he was there when Lord Valentia brought down Mr. Gawler, and he will state a conversation between himself and Lord Valentia to you, as offensive to me to state as that which I have stated of the Brothel, and the Bawdy-house: So public did Lord Valentia consider this business, so perfectly was he possessed of the fact, that Mr. Gawler was the intimate of his wife, and that a criminal connection, in short, had taken place between them, that coming into the house, having arrived but two days from Ireland, having not then seen his wife, in a walk with this Clergyman before dinner, he stated to him—"I know the world says Mr. Gawler lies with my wife, but that is nothing to me; she is her own mistress and may do as she pleases."

To carry Mr. Gawler down to the house of his father was nothing; but when he gets there to exclaim, that he knew the world said the defendant com-

mitted adultery with her, and to carry him down to the house in which his wife was, is that nothing? Does not that fix, indelibly, the stain where my address is meant to fix it, upon Lord Valentia himself, as knowing the defendant had committed adultery, and having promoted and encouraged the continuation of it? But that is not all, not only did he declare that he knew the world said Mr. Gawler slept with his wife, but he said to Mr. Bailey—"I shall surprise the defendant Mr. Gawler very agreeably, for I shall leave him here alone with my wife, I shall go away in the morning before any body is stirring."

It is true he did so—Mary Kennimore could not tax her memory with the time when he did leave the house, but he really did the next morning leave Mr. Gawler and his wife alone in the house in which he said he would agreeably surprise Mr. Gawler; that very Mr. Gawler whom he had before declared he knew the world said had a criminal connection with his wife.

This was in May, 1794; subsequent to this time Lady Valentia being driven from home, not knowing where to go, she at last took a small house at a place called Appleshaw, and there she resided so late as 1795; while she was there, it will be proved that my Lord Valentia went down to her, that he found Mr. Gawler in company with her, dining with her in the house, and that when he left the house, Mr. Gawler drove him the first stage with his wife; that Lord

Valentia went on for London, and that he was suffered by Lord Valentia to return with her to the house in which he had found them alone, and to which he sent them back again.

It was insinuated by my learned friend, that the course of the adulterer was plain, that, as soon as he committed the adultery, he pried into the character of the husband, that he drew together all the acts of his life, all the levities, all the little follies, and blew them up into a charge against him ; it was insinuated likewise, that the facts I should have to state, could only be proved by persons who were engaged in the conspiracy ; and it was roundly stated, that the conspiracy consisted of the family of the Gawlers.

MR. ERSKINE. I beg your pardon, you misunderstood me.

MR. GIBBS. I am very glad I misunderstood you—I did understand there was an insinuation of that sort ; if there was not, I have more pleasure in recalling what I said than in observing upon the imputation. One of the family I shall call, a man upon whose character I defy my learned friend to cast the smallest reproach, for it happens, in the course of my little business, that I have seen much of him ; I mean Mr. Henry Gawler, he has gone the same Circuit with me for a considerable number of years, and a man more loved by his friends, and more respected

by his acquaintance, I believe, does not exist; nothing, I am sure, can be imputed dishonorable to him; nothing did I ever hear of dishonor attached to his character. Him, I shall call to you, but I shall not leave them in the possession of the observation that the facts I have stated are to be proved by a brother of the defendant; for besides this brother of the defendant, I shall call to you a gentleman perfectly unconnected with the defendant, or his family; Mr. Bailey, the Clergyman, will state those facts which I have just repeated to you, and which, if they stood alone in the cause, tear up the action by the roots; I state that as law, that if Mr. Bailey proves to your satisfaction that Lord Valentia went down to the house in which Lady Valentia resided, taking with him Mr. Gawler, stating he knew by good report, that Mr. Gawler had committed adultery, and stating he should surprise him agreeably, I state it as law; and, I am sure, I shall receive no contradiction, that if these facts are proved they must clearly substantiate this fact; or rather, you must draw this conclusion from them, that Lord Valentia agreed to the adultery, and the law follows, that a man who connives shall not recover damages for that from which he has received no injury.

GENTLEMEN, I will not rest there, I shall call a gentleman, a Mr. Ferguson, the son of an eminent Scotch Advocate lately dead, and who delays the performance of certain duties in Scotland to give evidence in this cause; he will state those acts, which

I will not offend you by repeating, which passed at the dinner, and at the brothel afterwards.—Ashamed he is, undoubtedly, to come forward and confess he was one of the party who went to that brothel; yet, if he is ashamed of it, how much more ought the man who seeks now to recover damages for adultery,—a married man; how much more ought he to be ashamed of it?—In the looseness of conversation, he will prove that he sported with the virtue of his wife, that he said, “Gawler I know the first child my wife had was yours, but whether this she is now big with, is, I cannot tell”—What think you of a man who debases his own honor, who can so insult virtue itself as to speak in that way to his wife to whom he was then married—This Mr. Ferguson will tell you, but it will not rest there, it will not rest upon the testimony of Gawler, Bailey, and Ferguson, alone.—This conversation my learned friend would say is proved only by one person, he may be mistaken, or he might be hard of hearing; but there was another gentleman, a Mr. Wingfield, an officer in the Guards, he will speak to the same things, and he will speak something which the other did not hear, because it passed in a hackney coach before he entered—when these facts are proved, in what light does the plaintiff stand before you? as a man who wished for children, even if they were begotten by another man, who after the birth of that child declares he knew it was not his own, but the defendant’s; a man who, after that public avowal that the

child was not his, carries the adulterer down to the house in which his wife is, a man who states to a Reverend person, he knew he was the adulterer, and states, he should agreeably surprise him by leaving him there with her; a man who after Lady Valentia had retired from Rambridge, finds the adulterer with his wife, is carried by them one stage of his journey, and who sends them back to pursue that business which he knew had so often passed before;—a man who makes a sport of his wife's honor, and declares he knew Mr. Gawler had committed adultery; a man who goes with the same conspiracy afterwards to a brothel, and disgraces himself and her, by mentioning those facts I have stated; a man who in the grossest terms cautions the adulterer, this man from whom he now seeks redress, I will spare the epithet I was about to use; he cautions that man against contracting from the prostitute he was to be connected with, an infectious disorder, lest he should afterwards communicate it to his, Lord Valentia's, wife.

I do not desire you to make hasty comparisons, but insist upon this evidence, that Lord Valentia has received no injury; let him be content with the lot he has sought for himself; let him triumph in the honor he has acquired; and, if he wishes to do more, let him go to the market place and proclaim it by the sound of the bell; let him not come into a court of justice and seek for damages there. As moral men, you will say, a man who has so debased

his moral character, who has so delivered up to infamy the young woman his wife, ought not to receive any recompence, and his lordship will tell you, in point of law he is entitled to none.

(THE REV. JOHN BAILEY, *sworn*)

Mr. ADAM. Q. I believe you are a clergyman?

A. I am, Sir.

Q. Where do you reside?

A. At Burbridge.

Q. Do you know my Lord Valentia, the plaintiff in the action.

A. I do.

Q. Do you know Lady Valentia?

A. I do.

Q. Are you acquainted with Mr. John Bellenger Gawler the defendant?

A. I am.

Q. Did you know these parties before the year 1793?

A. I knew them in 1793.

Q. Did you know them in the Autumn of 1793?

A. I did.

Q. Had you frequent opportunities of visiting at Lord Valentia's house during that time in the Autumn of 1793?

A. I was there several times.

Q. Where did they reside at that time?

A. In Conduit Street.

Q. In London?

A. Yes.

Q. Do you remember seeing the plaintiff, the defendant, and Lady Valentia, together during those times?

A. I did.

Q. What observations occurred to your mind with respect to the conduct of the defendant and Lady Valentia at the time, in Lord Valentia's presence?

A. I thought they appeared as enamoured of each other, and that their conduct was very particular before the eyes of the husband?

Q. Do you know Mr. Gawler the elder has a house at Rambridge?

A. Perfectly.

Q. Do you remember to have been there in the month of May, 1794, or about that time?

A. Yes, about that time.

Q. Was Lady Valentia there at that time?

A. She was.

Q. Do you remember Lord Valentia coming there?

A. Perfectly.

Q. Who did he come accompanied by?

A. By Mr. John Gawler.

Q. The Defendant?

A. The Defendant.

Q. The same person you had formerly seen in Conduit Street?

A. The same person I had formerly seen in Conduit Street.

Q. Now Sir, had you any opportunity, or did you make any observation how long Lord Valentia might remain at Rambridge?

A. He came one day and departed before any of the family were up the next morning.

Q. That you will swear?

A. That I will swear.

Q. During the short time he was there, had you any conversation with my Lord Valentia?

A. I had.

Q. I should be extremely sorry to desire you to state any thing that is not fit to be heard, but on occasions like this it is necessary; will you be so good therefore to state any part of the conversation that passed between you and my Lord Valentia relating to the defendant and his lady?

A. Lord Valentia told me the world said——

Q. Where was this?

A. At Rambridge when he came down about May.

Q. In what place was it?

A. At Rambridge, in the lawn, I was walking with him alone.

Q. Now state to my lord and the jury what he said?

A. He told me the world said that Mr. John Belenger Gawler was intimate with his wife; but to convince the world that it was entirely with his approbation that they were together, he had brought him down with him to Rambridge—I understood Mr. John Gawler was to have returned with him the next

day, but, says he, do not upon any consideration let the family know that my intentions are to go before any of them are stirring, and especially, do not let Mr. John Gawler know that I am going, as I shall agreeably surprise him by leaving him behind; accordingly, Lord Valentia arose before any of the family was stirring, and went to the next Post Town, which was Andover, where I understood, he intended to take Post Chaise to Southampton, where he was going.

Q. Did any thing more pass from him to you at that time?

A. Nothing particular that I recollect, more than that.

Q. You say, Lord Valentia said, the world said Mr. John Gawler was intimate with his wife, was the word intimate the word he used?

A. More forcible, such as I could not with any kind of decency speak.

Q. Upon this occasion, you must recollect the duties due to justice will call upon you to state it?

MR. GARROW. If it was too gross for utterance, there can be no necessity for repeating it, I am willing to take it, it was gross and indelicate—He meant that my Lord Valentia expressed himself in the grossest manner possible—Do I state myself correctly?

A. Perfectly.

M. ADAM. Q. Did he say any thing more?

A. Nothing, as I recollect.

Q. Did he state any apprehension about what was to happen if he left Rambridge ?

A. Nothing, I am perfectly confident.

CROSS EXAMINATION.

Mr. GARROW. Q. Was you at that time the officiating Clergyman of the Parish ?

A. No, Sir.

Q. Is your living at Rambridge ?

A. No, Sir.

Q. At what distance is the church, of which you are Rector or Vicar, from Rambridge ?

A. I am not Vicar or Rector of any.

Q. Have you the cure of any Parish ?

A. I have of Burbage.

Q. Is that near Rambridge ?

A. Within about eleven miles.

Q. You was casually visiting there as any gentleman might be ?

A. I was.

Q. Do you frequently visit at Rambridge ?

A. Yes, I do.

Q. Is it a Village, or Town, or is it the name of any Gentleman's Seat.

A. It is the name of a Seat.

Q. How long might you have been on a visit at that time ?

A. Sir, I had staid a week, and sometimes a fortnight with Mr. Gawler.

Q. Do you reside in the family now ?

A. No, Sir.

Q. How long have you ceased to reside there ?

A. Two years ago, nearly.

Q. Did you collect from Lord Valentia, or from his conversation, that he had experienced many acts of Friendship from the family of the Gawlers ?

A. I did not hear any thing from Lord Valentia of that sort.

MR. GIBBS. That is not evidence.

MR. GARROW. I will put it another way.

Q. Do you know that Mr. Gawler's family were much concerned in the affairs of my Lord Valentia, and that there was a great confidence between them ?

A. I did hear that Mr. Gawler, senior, and Mr. Henry Gawler, had the management of Lord Valentia's affairs.

MR. GIBBS. Is that evidence ?

MR. GARROW. I will state why I ask it.

MR. GIBBS. Is it evidence what a man hears ?

LORD KENYON. Hearsay is not evidence except from the party.

MR. GARROW. Q. You was a casual visitor there ?

A. Yes, I was.

Q. There was no particular connexion or intimacy between you and Mr. Gawler's family ?

A. I have known them for years.

Q. Do you take that to be an answer to my question ?

A. Yes, I do, Sir.

Q. I did not ask you, Sir, whether you had known them for some years, but whether there was any particular connexion between you and the family of Mr. Gawler?

A. None, very particular, Sir.

Q. One cannot tell what particular persons call "very particular." No management of any estate of your's on their part?

A. None.

Q. Did you know the Seat called Rambridge, before Mr. Gawler was the possessor of it?

A. Yes.

Q. Who was the possessor before Mr. Gawler?

A. My father.

Q. Mr. Gawler had no management of your own personal affairs?

A. None.

Q. Had your father the good fortune to have him manage his affairs?

A. Yes, Mr. Gawler had the management.

Q. Mr. Gawler had managed your father's affairs?

A. He had.

Q. Was your father formerly a man of large property?

A. Very large property.

Q. How long has he been dead?

A. Eight or nine years, I think, I am not certain, it may be more.

Q. How long had Mr. Gawler managed his affairs before his died?

A. Many years—he was formerly a man of very large fortune.

Q. You have a curacy in the neighbourhood?

A. I have.

Q. And you live upon your fortune?

A. Yes, I do, thank God.

Q. A freehold estate?

A. No, I have not a freehold estate.

Q. An independent fortune in the funds?

A. I have an annuity.

Q. So I guessed—did the management of Mr. Gawler in your father's affairs which continued for many years end in Mr. Gawler's becoming possessed of the estate at Rambridge?

Mr. GIBBS. I object to that.

Mr. GARROW. I do it to the credit of the witness, I am instructed to say it.

Q. You have an independent fortune, which is an annuity?

A. Yes.

Q. Pray, Mr. Bailey, is that an annuity fixed and settled upon you so that you can dispose of it, or is it depending upon the will of others?

A. Not depending upon the will of others.

Q. Of another?

A. Of no one—it is uninfluenced by any one.

Q. Is Mr. Gawler the person from whom you receive it?

A. No, Sir, he is not.

Q. Is it no part of the consideration of the estate which was formerly your fathers?

A. No, not at all.

Q. Had you any particular conference with Lord Valentia?

A. None, whatever.

Q. Introduced probably by some of Mr. Gawler's family?

A. I was.

Q. You did not state to us what observation you made to Lord Valentia upon this conversation?

A. I have told you what I heard, and what I observed.

Q. All that passed?

A. Yes, Sir.

Q. Was you surpris'd that my Lord Valentia went away early in the morning without communicating his intentions so to do?

A. Indeed, I was.

Q. Nothing occurred to you that could make it a proper measure?

A. No.

Q. Do not you know that he had been told by Mr. Henry Gawler, that there were writs waiting for him at Andover if he went by day light?

A. No, I never heard it till now.

Q. Had you no reason to believe it was so?

A. No, indeed, I did not know it.

Q. You did not know that his affairs were deranged?

A. I had heard that his affairs were deranged, but not that he was in any danger of arrest any where.

MR. ADAM. Q. My friend has asked you several questions with respect to your father—Was your father twice married?

A. He was.

Q. You are the son of the first marriage?

A. I am.

Q. Who did he marry for his second wife?

A. He married a niece of the Duke of Somerset's.

Q. My friend has asked you, whether you had any conference with my Lord Valentia?

A. I had none.

Q. What impression did my Lord Valentia's declaration make upon your mind?

MR. GARROW. I must object to that certainly—that is for the jury to consider.

MR. ADAM. Q. How did your father acquire the large property he had?

A. By the second marriage.

Q. And that went to the children of that marriage?

A. It did.

(Mr. FERGUSON sworn.)

MR. CHAMBRE. Q. Do you know my Lord Valentia?

A. I do, Sir.

Q. Do you know the defendant in this cause?

A. Yes, Sir, I do.

Q. Did you happen to dine in company with those Gentlemen in the beginning of the year 1795?

A. It was last Summer, the month I cannot state.

Q. Where did you dine together?

A. At Mr. Henry Gawler's in Bedford Square. I dined more than once, I believe that was the time, Mr. Henry Gawler was not there, he was from home.

Q. Who else was of the party beside my Lord Valentia and Mr. Gawler?

A. I do not know that I can state every person, I can state several.

Q. Was Mr. Wingfield there?

A. He was, and several others.

Q. Was there any conversation took place in which Lord Valentia spoke of his wife?

A. There was.

Q. Will you state the nature of that conversation that took place concerning Lord Valentia's wife?

A. The greatest part of the conversation did not strike me particularly, except, one or two expressions. I can only state to the court those expressions which struck me so forcibly I could not forget them.—My Lord Valentia said to Mr. Gawler, “Jack I do not know whether this child is your's, or whether the next child will be.” The other expression which I recollect, was rather later in the evening, but I cannot state at what time.—I do not know whether I ought to state the expressions—they were very coarse.

Q. Where did this pass?

A. I cannot swear whether this was at the table or in the coach in which we afterwards went.

Q. This passed in the presence of all those you have mentioned?

A. It did.

Q. Were those words spoken in anger with the defendant, or did they appear to be good friends?

A. I saw no sign of anger.

Q. Was it spoken by way of remonstrance?

A. No—I wish to know from the Court, whether it is necessary I should repeat the very words.

Q. State the substance?

A. The idea that he should not go to the place where we were going, to get into such a state that he might injure his wife.

Q. Was this caution conveyed to the defendant in gross terms?

A. As gross as possible.

Q. Did Lord Valentia and the defendant go together to this place where the caution was supposed to be necessary?

A. To the best of my recollection they did.

Q. Was there any thing else that particularly struck you in the conduct and expressions of Lord Valentia?

A. Do you mean respecting his Lady? I recollect nothing particular, except that respecting his Lady.

Q. Were his conduct and expressions such at that time as induced you to communicate your observations to any of the company?

A. I rather think they were; I think, I expressed myself afterwards.

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CROSS EXAMINATION.

Mr. ERSKINE. Q. Had you any acquaintance with my Lord Valentia before this time ?

A. None, whatever.

Q. You went to dinner at Mr. Henry Gawler's, as I understand ?

A. I did, Sir.

Q. Was the company numerous ?

A. They might be eight or nine.

Q. Do you happen to know whether the other persons present knew Lord Valentia well ; when you came to dinner, it struck you they were all friends and acquaintance sitting down to be merry ?

A. I saw nothing to the contrary.

Q. A great deal passed, and there were only two expressions that particularly struck you ?

A. Those are the only ones that struck me so that I could take my oath of them ; there were others of which I have a faint recollection, but which I would not state upon oath.

Q. There must have been a great deal of wine drank, and, I take it for granted, the conversation of which this is a part, and a prominent part, would not take place while the company was in a state of sobriety ?

A. Certainly, the first must have been when the company were in a perfect state of sobriety, immediately after dinner, if not before the cloth was removed, almost immediately afterward.

Q. I have understood you, this was by no means in anger, but spoke jokingly ?

A. No, Sir.

Q. Though I am certain it must have excited the sensation you have expressed, did it strike you, at the time, to be an indecent remark?

A. It struck me at the time to be so extraordinary that I could give no reason for it.

Q. You never knew him before?

A. No, never—I hardly knew there was such a person.

Q. It was, I understand you to say, spoken in that jocular manner I have described to you?

A. It was.

Q. You stated, you are not quite sure whether the remaining expressions were made at Mr. Gawler's, or whether they were in the coach. May I ask you at what time this was?

A. I cannot say, it was either broad day-time, or nearly so.

Q. What time of the year was it?

A. It was in summer.

Q. I take it for granted, some wine had been drank at that time?

A. Certainly.

Q. I take it for granted, more than a little had been drank?

A. I cannot state myself to have been in a state of intoxication. I can only say for myself.

Q. You had not known my Lord Valentia either to know how much or how little wine affected him?

A. No, Sir.

Q. Therefore, you cannot say that Lord Valentia was sober at the last time ?

A. I cannot state whether he was perfectly sober.

Q. Was that said, Sir, gross as it is, in the same sort of manner with the other at the table ?

A. It was.

Q. I take it for granted Mr. Gawler had taken a share in that licentious and improper conversation ?

A. I do not recollect particularly.

Q. You say some other expressions struck you but not sufficiently to speak upon your oath ?

A. No.

Q. Did you ever see Lord Valentia after that ?

A. I have several times. I have been, I believe, twice in his company.

Q. You knew, I believe, that there was an intimacy between him and the defendant ?

A. Yes, Sir.

Q. When was this ?

A. In the course of last summer.

Mr. CHAMBRE. Q. My friend has made use of the word jocular, was the impression made upon your mind as wit, or the expressions of a man careless of his wife's conduct ?

A. They were very strong ; it appeared a most extraordinary mode of expression.

Q. You say you have a faint recollection of other expressions beside those you have particularly deposed to ?

A. I have.

Q. Do you mean expressions of a similar tendency?

A. They were.

(Mr. WOLSELEY sworn.)

Q. Are you acquainted with Lord Valentia?

A. I am, Sir.

Q. And Lady Valentia?

A. I am, Sir.

Q. Was you at Areley, in 1793?

A. I was, Sir.

Q. Do you recollect any conversation of Lord Valentia in the presence of Lady Valentia?

A. I recollect Lord Valentia coming up from Areley, one day and saying in the presence of Lady Valentia, that he had just had to do with a pretty girl, or something to that purpose; that he had just had a pretty girl.

Q. Could you doubt at that time what was meant by the words?

A. No, it was said in a jocular manner, laughing at the time.

Q. Are you at all acquainted with the defendant?

A. I am not, Sir.

Q. Or any of the family?

A. No, Sir.

Q. Did he name the woman?

A. No, Sir, he did not.

CROSS-EXAMINATION.

Mr. GARROW. Q. Are you not connected with the family?

A. No, Sir.

Q. When did you first communicate that?

A. I might have mentioned it in private conversation that Lord Valentia said he had just had a pretty girl.

Q. Was it resented by Lady Valentia?

A. No, Sir, she said she did not care.

Q. In the same jocular manner?

A. Yes, Sir.

Q. Did you know who you mentioned this to?

A. I mentioned it in private conversation, I was subpoenaed this day week.

Q. You have no acquaintance with Mr. Gawler's family, or any part of it?

A. None at all.

LORD KENYON. *Q.* Who did you communicate it to?

A. It is impossible for me to charge my memory to what I might say in a private conversation.

MR. GARROW. *Q.* Where do you live Mr. Wolfeley?

A. In Staffordshire.

Q. Are you of any profession?

A. None.

Q. You are the son of Sir William Wolfeley?

A. Yes, Sir.

Q. Had you many opportunities of seeing Lord Valentia and his Lady together?

A. I was there about six weeks.

Q. I will ask you, whether during the whole of that time, his conduct was not towards her that of

an affectionate, indulgent, fond husband, constantly without exception.

A. At times it was; I have heard Lady Valentia say, she would leave the house and go to her brother.

Q. I suppose there are many families where the Gentleman is sometimes in a passion; do you mean to say there was any thing more than that?

A. Certainly not, Sir; nothing more.

Q. Was not the result upon your judgment that he was an affectionate, kind, and indulgent husband?

A. Upon the whole I thought so.

Q. Was he not remarkably so?

A. Not remarkably so.

(Mr. HENRY GAWLER sworn.)

Mr. GIBBS. Q. I believe you are brother of the defendant?

A. I am, Sir.

Q. Are you at the Bar?

A. I am, Sir.

Q. You knew Lord Valentia before he was married?

A. I knew him so early, I apprehend, as the year 1789, he was introduced to me by the son of Sir Henry Cavendish.

Q. I believe Lord Valentia's father married the daughter of Sir Henry Cavendish?

A. He did.

Q. Do you recollect, Sir, after their marriage their residing at Areley?

A. Yes, I do.—Lady Valentia's first child was born in October, 1793.

Q. Do you recollect previous to that time, his saying any thing to you concerning his prospect of children?

A. I do recollect some particular expressions when I was down at Areley in 1792; but as to what part of the year I cannot precisely say.

Q. What were the expressions he made use of?

A. He wished to have children to cut out the Cavendishes, and that he did not care who the devil got them.

Q. Have you heard him repeatedly say this?

A. I have.

Q. Do you remember his ever saying any thing concerning Lady Valentia to you, of a loose sort?

A. I remember a variety of expressions concerning her.

Q. What were they?

A. Those expressions I am now going to tell you happened between the beginning of the year 1792, and July, 1792.

Q. When did that happen you are about to mention?

A. It happened sometime about the beginning of the year, 1792. I remember one very particular expression, he asked me, in very gross terms, whether I, as well as my brother, was intimate with his wife, making use of a term which I do not suppose it is necessary to mention.

Q. Conveying his meaning in the grossest terms, he asked you whether you, as well as your brother, was intimate with his wife!

A. He used the grossest term I know of.

Q. Did he use this expression with anger against your brother?

A. Most certainly not, he was in the habit of saying this not only once but several times.

Q. Do you remember, Sir, whether Lord Valentia went abroad in January 1794?

A. He did, I recollect, about the year 1794.

Q. Do you remember his returning in May 1794?

A. I do.

Q. Lady Valentia was at Rambridge?

A. She had been there about a fortnight.

Q. Had there been any executions at Areley?

A. I do not know whether there was any in the house, I had information there were; I believe, a Gentleman, now in Court, sent me the information.

Q. Did Lord Valentia call upon you when he came from abroad?

A. He sent to me and my brother, and desired to see us.

Q. Do you know whether your brother went down with him to Rambridge?

A. He went down with him at the particular request of Lord Valentia, which was made, in my presence, to my brother.

CROSS EXAMINATION.

MR. GARROW. *Q.* With respect to one part of
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the conversation, how did you treat the expression he used, I suppose you stated it as a mistake?

A. No, I did not.

Q. Did you tell him you suspected your brother?

A. I told him nothing of the matter.

Q. Did you give him no answer?

A. I gave him the answer I constantly did on those occasions, I laughed.

Q. Did you, at that time, suspect there was any intimacy between your brother and Lady Valentia?

A. I had some suspicions.

Q. Did you communicate those suspicions?

A. No, I cannot say I did.

Q. You and your brother lived very affectionately together?

A. Very much so, as brothers usually do.

Q. Can you charge your memory that you never in the way of caution communicated those very extraordinary conversations as they now seem to strike you?

A. With respect to the connexion itself, I have often spoken to him on the subject.

Q. You did not communicate those expressions?

A. I do not recollect communicating those particular expressions.

Q. How soon after you became acquainted with Lord Valentia, did your brother become so?

A. He was introduced at the same time with me.

Q. You was a trustee to the marriage articles?

A. I rather think my name is not mentioned in the marriage articles, in the subsequent settlement

made of the whole estate I did become a trustee for various purposes.

Q. Under whose management was that business?

A. Mr. Roberts, the gentleman who sits there.

Q. Was your father concerned in the business of the settlement at all, or was he in the subsequent arrangement of their affairs?

A. Yes, he was.

Q. You have told us you suspected an improper intercourse between your brother and Lady Valentia?

A. I did most certainly.

Q. How early did you suspect that?

A. It is difficult to fix that.

Q. Was your brother very much at Areley?

A. Very often, I apprehend; several times he went down there by the particular request of Lord Valentia.

Q. I dare say it was by laughing at this observation that you got rid of it?

A. I will say what I did.

Q. Did you not say so?

A. My reason——

Q. I do not ask you your reason for it—did it ever occur to you to say—“Why my Lord Valentia, if you really think so, your conduct is extraordinary?”

A. I have often mentioned to Lord Valentia the circumstance of the connexion between my brother and Lady Valentia.

Q. Before Lady Valentia eloped?

A. Yes, long previous to that.

Q. After Lord Valentia went abroad, she was at your father's house?

A. She went down there.

Q. Did she go with your knowledge?

A. She went with my knowledge, and at the desire of my father.

Q. I do not know whether you thought it your duty to communicate the improper intercourse that was going on between your brother and Lady Valentia?

A. Most clearly, I did not think it my duty.

Q. So that he received her without any knowledge that you suspected any intercourse?

A. Completely.

Q. Was your brother there?

A. He never was there to the best of my knowledge till Lord Valentia carried him down.

Q. If he was there, and slept in a room opposite to Lady Valentia's, are we to understand that was without your knowledge?

A. That is totally out of my knowledge.

Q. You did not know of it till the witness said it; did you hear the witness Kennimore examined?

A. Yes, but I understood it was subsequent to Lord Valentia going down there.

Q. Where does Lady Valentia reside now?

A. In a lodging in Sloane Street.

Q. Did she reside there in the beginning of this month?

A. I apprehend she did.

Q. Have you any doubt, that about the 2d of May, she resided in Sloane Street ?

A. None at all.

Q. Did your brother visit her about that time ?

A. I cannot tell.

Q. Did you, by his desire, visit her ?

A. Not by his desire, I visited her by the desire of Lady Loughborough and Lord Courtenay.

Q. Did your brother know it ?

A. Certainly, he knew it.

Q. Did you with your brother's knowledge, prepare any affidavit of Lady Valentia ?

A. Not with my brother's knowledge.

Q. Did you communicate to your brother that you had prepared any such affidavit ?

A. After it was done.

Q. After it was drawn, or engrossed ?

A. After it was engrossed.

Q. Did he see it before it was exhibited ?

A. No.

Q. Before it was exhibited, did you communicate to him the contents ?

A. I cannot recollect the precise time, he was in Town at that time for a day or two about that period.

Q. Have you any doubts about it ?

A. I seriously have a doubt.

Q. Was that resistance to the Writ of *Habeas Corpus*, made with your brother's knowledge ?

Mr. GIBBS. I do not know to what point this is pressed. If they can prove any act of the de-

defendant's to affect him, that they may do, but with respect to the defendant's knowledge of a thing by another, I conceive that is not evidence.

LORD KENYON. They are attempting to affect him by his own acts.

MR. GARROW. Q. Was the resistance to the Court ordering the Habeas Corpus to go with your brother's notice?

A. I rather apprehend he knew it about the day the affidavit was filed.

Q. Have you the least doubt he knew such an affidavit was made, and was to be used for the purpose of resisting the Habeas Corpus, from you I mean?

A. Certainly, I did inform him either on the day on which it was filed, or after.

Q. Did Lady Valentia resist the application through any Solicitor employed on the occasion?

A. Mr. Lowten was employed.

Q. Who is also a Solicitor in this cause?

A. Yes, Sir.

Q. If I understand you right, the affidavit was not prepared by the Solicitor from instructions communicated to him, but by you?

A. The way in which that happened was this
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Q. I want the fact?

A. Instructions were communicated in a letter to me by Lady Valentia.

Q. In consequence of that you prepared it, did

you do so from the letter, or from any other instructions?

A. I prepared part of it from the letter.

Q. Do you remember a person of the name of Jane Smith?

A. I do.

Q. Was she resident with Lady Valentia?

A. She was.

Q. Did she join in the affidavit?

A. She did.

Q. Did you examine her for that purpose?

A. I did.

Q. When you make mention of that affidavit, you mean the affidavit of Lady Valentia and Jane Smith?

A. Of course.

Lord KENYON. Q. You communicated the contents of that affidavit to your brother?

A. If I recollect right it was on the same day.

Mr. GARROW. Q. After these conversations, we have learnt that your brother was a good deal at Areley, did you make any parties in which you brought your brother and Lord Valentia to your house?

A. Lord Valentia was resident in my house about the end of the year 1795, I mean about July.

Q. By invitation?

A. The way he came to my house was * * *.

Q. Was it by invitation?

A. He resided at my house for about a fortnight.

Q. Whilst he resided there, did you make any party in which your brother was one?

A. No particular party at all, my brother frequented my house then as he did upon all other occasions.

Q. It does not occur to your recollection that it happened there was at dinner a party of gentlemen—assembled at your house to dine?

A. There was, certainly, several times during the stay he made there.

Q. Was your brother always of the party?

A. It was his custom to be in Town about two or three days in the week, and he sometimes stopped.

Q. Some of them were pretty late parties—some till the sun arose?

A. I am most certain not, as far as I recollect, it was not to my knowledge if it was so.

Mr. GIBBS. No, no, you mistake the evidence, it was not till the morning.

Lord KENYON. Q. Was you the confidential friend of Lord Valentia?

A. If your Lordship means by the word friend, that he enjoyed my confidence, or was a person for whom I had any regard or esteem, most assuredly he never was, nor did I maintain any particular intimacy with him.

Q. Did you permit your name to be used as a trustee for a man for whom you neither had any regard or esteem?

A. Certainly—when I became trustee it was for particular reasons.

Q. Was all your treatment to delude him ?

A. Lord Valentia was threatened to be arrested by his creditors ; it was conceived necessary he should be in Town, and, by the desire of my father, and at his own desire, he obtained permission to be at my house to shelter himself, and he accordingly came there.—I took him into my house against the advice of every friend I had, in some measure, certainly, out of pity to him.

Mr. GARROW. *Q.* I will ask you whether you did not continue to associate with my Lord Valentia, and to express great concern and friendship up to the time of the Writ of Habeas Corpus ?

A. I have not often seen him since, except in company, once, when he came to me relative to this action.

Q. How lately ?

A. I apprehend when he came the last time with Mr. Maxwell, was about November, 1795, if I recollect right.

Q. Do you recollect ever saying to my Lord Valentia, that he had better not bring this action ; for, if he did, his character would be attacked not in the way it has been to day ?

A. I protest before God I never made use of that expression.

Q. Not in the presence of Mr. Maxwell ?

A. No, never, but give me leave to say what words I did make use of.

Q. Am I to understand you that you never intimated that an unnatural practice would be imputed to him?

A. I protest before God the reverse. Mr. Maxwell came to me for the purpose of persuading me to let a verdict pass for Lord Valentia; we had fourteen or fifteen conversations, and I stated if what Lady Valentia had stated to me respecting the conduct of Lord Valentia, which was laid before the Court—I told Mr. Maxwell if it was true what she stated, she was the most injured woman upon earth; and, that instead of holding her up to disgrace, the best recompence he could make, was to let it drop, and let her pass the rest of her life in peace.

Q. Was it not that she had imputed unnatural practices to him?

A. I said if it was true, Lord Valentia, instead of holding her up to disgrace in a Court of Justice, the best thing he could do would be to suffer her to pass her life in peace; and, I also advised, and, I called upon Mr. Maxwell to answer it,—that when the cause came on, not a syllable should be brought forward in this cause respecting Lady Valentia's statement.

Q. You stated that at the time?

A. Most solemnly I did.

Mr. GIBBS. *Q.* Will you be so good as to repeat that?

A. I told Mr. Maxwell that not a syllable of what Lady Valentia had charged Lord Valentia with, which has been laid since before this Court, should be introduced into my brother's cause were my advice consulted.

Mr. GARROW. *Q.* Was it afterwards made the subject of an affidavit in the Court to resist the Writ of Habeas Corpus, with your knowledge?

A. It was certainly with my knowledge.

Q. You prepared the affidavit?

A. I did, I took her instructions—I told you before she sent me a letter which contained part of her instructions.

Q. Afterwards, having communicated it to your brother, as you told me before, it was filed in the Court?

A. Yes, Sir.

Mr. GIBBS. *Q.* I want to ask you, did you take any steps in the business of Lady Valentia by the desire, or at the suggestion of your brother?

A. Most solemnly, not.

Q. Was every step you took at the suggestion of Lady Valentia's friends?

A. Yes, and of Lady Loughborough in particular.

Q. Did your brother ever suggest to you a fact to be established in the business?

A. I most solemnly protest, before God, he did not.

Q. I think you said, in your conversation with Mr. Maxwell, when he was speaking upon the subject, you never did pretend to him that any thing of the sort would be relied upon by your brother?

A. The reverse—since then, I have seen Mr. Maxwell, and I then repeated the same expression, that were my advice followed, not a syllable of it would be introduced into this cause.

Q. That you are sure of—Did you tell him what would be the answer to the action?

A. I once, upon a former occasion, told him the whole of the defence now set up.

Mr. GARROW. There is one material fact I wish to know — whether in the latter end of April, or beginning of the present month, Mr. Gawler's brother was in the course of visiting Lady Valentia?

Mr. GIBBS. I object to that; it may be the ground of another action.

Mr. GARROW. I do not mean that he visited her in a criminal way.

Lord KENYON. It has been said his brother has been in the habit of calling upon her.

A. I cannot fix the date when he left off visiting Lady Valentia.

Q. Did he in the latter end of April, visit her?

A. I really cannot recollect.

Q. Have you any doubt about it?

A. Yes, I have.

Q. Did you ever put upon paper that Lady Valentia speaking of the 2d day of this month of May.— — —.

Mr. GIBBS. I object to that.

Lord KENYON. I do not think it is of any great importance.

WITNESS.—There is another circumstance which the Counsel has not asked me to, which were some expressions of Lord Valentia—When he came up to me from Areley, he used to beg me to send my brother down, for that his wife was never easy without him.

Q. What did you do upon that ?

A. I have often talked to him.

Q. Did you send him down ?

A. No, I did not, most solemnly.

(Mr. WILLIAM WINGFIELD, *sworn.*)

Mr. ADAM. Q. You are, or were in the Horse Guards ?

A. I was, Sir.

Q. Do you know the Plaintiff and Defendant in this action ?

A. I do, Sir.

Q. Have you at any time in the year 1792, or 1793, seen them together ?

A. I have, Sir.

Q. Had you an opportunity of observing the behaviour between the Defendant and Lady Valentia in the Plaintiff's presence ?

A. I believe it was at the conclusion of the year, 1792, I supped one evening with Lord Valentia, the whole of Mr. Gawler's attention, who was one of the company, was to Lady Valentia. I dined there the following day, and before dinner he spoke to no other person but Lady Valentia, he sat next to her the whole of the dinner time, and, after dinner, I

went away early, but he seemed to pay no attention to any other person while I was there.

Q. Was Lord Valentia there?

A. Lord Valentia was present.

Q. Do you remember being present at any time, and when, Lord Valentia said any thing respecting Lady Valentia and the Defendant; first ascertaining the time and place.

A. To the best of my recollection it was the very hot weather of last year.

Q. Do you recollect being present with the Plaintiff, the Defendant, and Lady Valentia in the autumn?

A. No, I do not.

Q. In the very hot weather, you say, of last year, you recollect dining with Lord Valentia?

A. Yes, Sir.

Q. Where was that?

A. At Mr. Gawler's.

Q. Which Mr. Gawler's?

A. Mr. Henry Gawler's.

Q. Do you recollect who was of the company?

A. Perfectly, Sir.

Q. Who were?

A. I dined twice with him, the first time in the same year only Mr. Henry Gawler, Mr. John Gawler was there before dinner, but did not stay there to dine, as he was going down to Hampshire to see Lady Valentia.

Q. Did Lord Valentia know of his going there?

A. He did, and gave him some message, I do not

perfectly recollect what it was, but I was rather surprised at the nature of it; some foolish message, upon which Lord Valentia observing, I thought it remarkable conduct in him, said, "he does all my business with my wife for me."

Q. Did you make any observation upon that?

A. I did not, Sir.

Q. How did you understand that?

A. I understood it as a speech which reflected infinite dishonor upon him, and was shocked at it.

Q. Did any thing more pass at this dinner or upon this first meeting at Henry Gawler's?

A. Nothing more, Sir.

Q. At the second dinner, can you recollect who was present?

A. Yes, I can, I think—Mr. Ferguson, Mr. John Gawler, Mr.— Mr. Sparrow, were there.

Q. Do you recollect any conversation that passed at that time?

A. Yes, Sir, very early either before or soon after the cloth was removed, Lord Valentia made a declaration as near as I can recollect to this purpose, "That whosoever child this might be of which Lady Valentia was with child it was not Gawler's, though he was satisfied the first was."

Q. Mr. H. Gawler was present?

A. No, Sir, he was not.

Q. Mr. John Gawler was?

A. He was.

Q. This passed, you say, very early?

A. Very early.

Q. Was there any opportunity of intoxication?

A. None, Sir.

Q. Now, Sir, in the course of this dinner, did any thing more pass concerning the Defendant and Lady Valentia?

A. I heard no more, nothing so strong that it remained fixed till going away in the evening.

Q. What time in the evening might it be?

A. I am satisfied it was not latter than nine o'clock, it was still day-light.

Q. You say something passed, what was it?

A. It was so strong, I recollect the most particular circumstances of it—Mr. Gawler got into the coach first, he said something I do not recollect what it was; Lord Valentia went in immediately after, and he answered.—The expression is too gross to be mentioned; but he said, I always knew that you had that sort of connexion with my wife, but you never had the impudence to tell me of it before.

Q. Can you tax your memory correctly to those expressions?

A. I can.

Q. Was the expression so marked it made an impression upon you?

A. The answer was given with a degree of asperity.

Q. Did any thing more pass upon that occasion?

A. Nothing more, Sir.

(CROSS-EXAMINATION.)

Mr. GARROW. Q. It was at the same time that Mr. Ferguson dined there?

A. It was.

Q. Was you acquainted with Lady Valentia then ?

A. Yes, Sir.

Q. Have you seen her lately ;

A. I have, Sir.

Q. How lately ?

A. In the course of the week, I have.

Q. In company with whom ?

A. In the company of Mr. Maxwell.

Q. Any body else ?

A. I called there with Mr. Warren.

Q. Have you called there with Mr. John Gawler ?

A. No, certainly not.

Q. Have you ever visited her with Mr. John Gawler in Sloane Street ?

A. Frequently, I have—If I have not, it has been because I have been out of Town.

Q. How lately have you ?

A. Not to the best of my knowledge within this last month.

Q. Not in the present month ?

A. Most certainly not.

Q. You do not mean this gentleman when you say Mr. Maxwell ?

A. Certainly not.

Mr. GIBBS. My Lord that is my case.

THE HONORABLE THOMAS ERSKINE,
IN REPLY.

May it please your Lordship; Gentlemen of the Jury. I had the honor to address myself to you in the opening of this cause; I fear I took more credit for human experience, and more credit for that individual experience which belongs to me, on the subject now in agitation, than I ought in prudence to have done; and I am ready to admit, that my learned friend has shewn, and I remember his expression in his address to you, that I was not entirely so well acquainted as I thought with the *Adulterer's Course*; I did conceive that my experience had enabled me to fathom it, and to know exactly its limits; I thought that in the practice of Eighteen Years, in which I believe I may say without any exception whatever, I have been concerned for those who have been Plaintiffs, that I could not figure to myself a case capable of arising, that should be altogether new; I find in that I was mistaken, and I consider that this is a most momentous question for you to decide upon:—I have nothing to conceal, and I have no difficulty in confessing, that whilst my learned friend was opening his address to you, and stating the evidence that he was instructed to state, and making those observations which from any body would be impressive, but from him particularly so; I felt my blood boiling within me with indignation against the person whom I represent—I felt no disposition to

rise up again to address you, and was determined not to do it, if my learned friend proved the case exactly as he stated it, and could convince you that Lord Valentia is the man he represented him to be; but which, without your Judgment and your verdict upon oath, I cannot admit him to be; I should have said, and I do repeat again, that he was a man against whom the indignation of the World should arise; and I should feel that disposition to express my abhorrence of his character and conduct that I before stated to you; but till we come to judgment, we must very narrowly inspect proofs; before we come to judgments that are to produce such consequences, the scrutiny must be great indeed; this is no light matter, and, therefore, it requires cool deliberation, and impartial judgment

In transactions of courts of justice, when witness is opposed to witness, and evidence to evidence, much attention is necessary to be used, and there are some standards of judging which judges, in all times, and in all enlightened countries, have had resort to.

The first of those standards, gentlemen, is to compare the conduct, and the character of the man whose conduct and character you are examining, with the general conduct of mankind; to compare it with your experience in the world, and to compare not only with your own experience, but with the experience of those who have lived before you

in other times, and in other nations, and of your own time, and own nation. It is your duty, before you pronounce your judgment, to see how that is reconcileable with other things; for, Gentlemen; it is the melancholy experience of Courts of Justice that things are too frequently mistaken; sometimes you see a man acquitted and going away in triumph with the consciousness of his Guilt, and who, a very short time afterwards, discovers very emphatically that guilt; on the other hand, it is a much more melancholy thing to find a man of real honor consigned to infamy more poignant than death, by a charge so disgraceful as this. I am ready to admit, and perhaps the reason I stand up with more firmness to you, is, that I have derived this confidence from other stages in the cause. I told you that whilst my Learned Friend was speaking, my indignation rose against my client, but how much more did it flow against him, when, not many days ago in the Term, my Learned Friend was instructed to make a charge against him of a more heinous nature—a charge that makes a man whom God has given his image to, despicable, and which one cannot hear but with horror; I sat here not only with horror, but with that indignant reluctance to feel I should be afterwards called upon to do that which I thought I should be in no condition to do; to negative the affidavit of a noble Lady prepared against the Plaintiff in this cause, charging him with that, which, had it been true, would have entirely destroyed the case I am about to lay before you to day;

because, it would have cut from under my feet, to use my Learned Friend's expression, the standard of my observations which I intend to make to you, that, in judging of my Lord Valentia, you must judge and compare him with the conduct of men; but had I set out with finding him no man, with confirmation that he is not to be judged like other men, with considering him to be one not entitled to that character, weak indeed had been my argument. On the contrary, now I find him restored to credit and the character of a man, and I resume my situation in Court, and I call for judgment upon my Lord Valentia as a man. I will ask you, Gentlemen; and I request you will attend to it, that I can, after what I have said, have no interest in serving a man who deserves the imputation, if he deserves what has been said, my abhorrence would be against him; yet let me put this question first to you, Gentlemen; suppose, to repeat my own expressions which are barely worth remembrance at all. Suppose this Volcano had burst upon us to day, which was exploded in the Term; and suppose, instead of your sitting to hear what you have heard, you had heard that charge made to day, our countenances would have reflected the same sentiment, and if there had been more wisdom and cunning in the cause, (although my Learned Friend has much of the first, he is superior to the last) than the charge might have made this day, how would you have felt, and how should I have felt if my Lord Valentia had been exhibited as a S—— before you?

I must have fallen beneath it, I could only have stated what it would have been idle to state in a Court of Justice, the protestations of a man who cannot be heard in Judgment to protest for himself, yet, after consultation upon consultation, after anxiety deeper than I ever observed in the human character, my Learned Friend and myself were forced into Court by a man surrounded by difficulties—contending for more than his life, and expecting such a charge to be made against him—My Learned Friend admitted, that it was not his meaning to rest the defence of Mr. Gawler upon any such ground; I admit, says he, that my Lord Valentia purged himself of that charge by his oath, and there that rests; I say, that matter does not rest there; I say it contaminates the defence set up to day; I say, and maintain it, that he did not purge himself by his oath but by the oaths of all who were connected with him: He purged himself by the united oaths of all his family and servants who were the objects of disgraceful charges and false imputations; and my Friend tells you, he is possessed of that which was the judgment of the Court in his favor, the delivery of this child which he desired so much to have as to go through the fiery ordeal—a child which you are led, to day, to think he knew not to be his, and which, instead of going through any ordeal, instead of subjecting his character to any stain, if it was made under any doubtful circumstances, I should, had I been so situated, be afraid of committing a criminal offence by concealing it

for ever from my sight—If my Lord Valentia is not to be judged of as you would judge of others, if we are not to be judged as you would be yourselves judged, by comparing your conduct, which, God forbid, you should be called upon to do, by referring to probabilities, by comparing his course and habits, and by that which in common experience occurs—let me sit down—say so to me now, and certainly I have nothing to address you; because I have nothing to address upon, on the present occasion, but what is the testimony of the witnesses; we sit not only to examine the truth of the evidence, but its application; whether there is veracity in the first place, whether they are not mistaken in the second place, and in the third place, what concludes to, and whether it proves the charge—You cannot engage in any controversy of this sort, but by erecting the standard by which all human transactions must be measured, and you must examine that which is the ordinary experience of life, and that which you would expect in your turn if at any time your conduct should be the subject of Judicial enquiry.

GENTLEMEN.—In the first place, Lord Valentia is not only restored to his character as a man, but he is restored to something more; you have this attack made upon him by Lady Valentia, living with the Defendant as there is every reason to suppose from the evidence of Mr. Wingfield, who is last examined, who has seen him in Sloane Street, and

who says he himself should have seen her oftener but from his absence from Town, living with her, connected in adultery with the authorefs of this cruel imputation, made at the time when the cause was in the paper, when it was sufficient to have discomfitted any man; under such circumstances it was like a clap of thunder, unexpected and terrific.— And yet, the man who stood so degraded, stands upright upon his feet again, and my Learned Friend now with a great deal of address which is natural to him, suggests this is but a bye-battle for the purpose of this cause. And if it is to stand upon the same ground on which it has been put to day, all I ask from the observation is this, that Lord Valentia is to be taken to be like other people. My Learned Friend, Mr. GIBBS, has said (and I admit he has been much better employed) that he is not much acquainted with the principles of morality of the rising generation, that he does not know by what principles they regulate their conduct, or in what way they express themselves. I am sorry to be obliged to say (though I am not much acquainted with them myself) there is great reason to believe that my Learned Friend would not derive much information; for, I am sorry to remark, that the licentiousness of the times does lead them, in many instances, from that sober, decent morality, that is fit for persons in high stations—but this I know, and I will appeal to my Learned Friends without having frequented those haunts that have been alluded to, that licentious as the times are, and depraved as

young men of fashion may be, and fallen from the course of virtue which particularly distinguished our ancestors, the honor of the present generation is equal to the honor of any generation that existed before; it is a sense that almost every man feels, and which immoral men feel with as much force, and with as much acumen as men the most religious. What can be more keen than feeling when you are lowered in the eyes of the world, and being known to be a cuckold; and as a man that has no enjoyment of the woman he is entitled to enjoy.— I put it to all who hear me; I put it to the world, whether it is not one of the most degrading feelings—a sensation that men cannot get the better of, even if they have no regard for the woman; for there is a pride and vanity that he does not like that another should be more favored than himself, and that he should be supplanted where he, alone, had the sacred right. The first thing you are desired to believe is, that he is a man not possessed of this feeling, but that he wishes, as the Poet expresses it, to be made “*a fixed figure for the hand of scorn to point its slow and moving finger at.*” That he has not a feeling that every man has, a feeling that is common to mankind, and his nature: you are desired to believe that he is so far from being this man, that in seriousness, he not only sported with his wife’s reputation, but that he desired any man should take his bed; and, so as he had children, it mattered not how they came. I would first ask you, what your opinion in

this respect; Is that a common character? Supposing a man to have no affection for his wife.—Supposing a man to feel nothing at being made what it is impossible for one man to describe another—Is that a common character, or No? You could not answer me, therefore, I will give you the answer of my friend Mr. GIBBS, in the midst of his excellent address to you, and to the astonishment of every body in Court; for when he is stating that which he has not proved, he could not help intermixing such expressions as these “Can you believe a man capable of holding such language? Did you ever hear of such a man?” And then he appeals to your experience whether you was ever acquainted with such things; or, whether in the result of all that you have heard of the corrupt age, and the wickedness of persons, and of corrupt society, that what he has stated to you ever met your ears before? Then, Gentlemen, I think it becomes your duty to attend to the proof, and to see whether that, which never existed before, exists in the instance before the Court.—Whether there is not the possibility of mistake, and whether this unfortunate nobleman’s conduct may not be relieved from some expressions, and they be shewn not to carry that gross and horrible meaning; because I say they are not credible, as so understood; but I think the witnesses do not mean to express themselves stronger than they felt, and the only Witness with whom I have any acquaintance, and whom I respect, having long known him, namely, Mr. Ferguson, his evidence made no im-

pression upon me, as it is contended it should upon you ;—I take the opportunity of doing that which I am now doing, that is, the right of examining every man's testimony and the right of considering every transaction which comes into a Court of Justice, by those rules and principles by which they are to be decided. Now, Gentlemen, if my Learned Friend had started first, and I had never been heard at all, and had given no evidence ; and that my Lord Valentia had stood a stranger in the cause, he would have stood only as a man to be judged by the principles laid down, and you would have said he had no affection for the woman ; that he disliked her and abhorred her, and was incapable of any social affection ; incapable of performing the offices of a husband, and a father ; and was a man who ought to be vomitted out of the society of men, the ordinary course and habits of his life being such as to condemn him as a member of civilized life : but is it not an extraordinary thing that this Mania, if I may so call it, only came upon him when he was in the Family of the Defendant ? Is it not extraordinary it should seize him only when he is the guest of a man who has expressed himself concerning him in a manner from which one would have thought he would not be particularly covetous of his company ? Yet, you find, the whole of his evidence which distinguishes this Gentleman, and in which he is sought to be countenanced by the rest, in scenes of that sort. Let me ask this question, and let me do it for the benefit of society, because

your verdict will have a great effect upon the public. —Let me ask, but expecting to hear from his Lordship when he comes to sum up to you, whether his experience at the Bench and Bar, has led to a case of this sort, where all the evidence is so directly in contradiction to the Defence, where all the evidence of elevated persons in the world, male and female, and that not an obscure female but a woman of high birth, was so in favor of our case—the Plaintiff mixed with all the persons of fashion, and spent his time in the company of his equals, and yet there cannot be found in this cause one person, through the whole circle of that acquaintance; there cannot be found discarded servants who are sometimes eager and ready to exaggerate every thing in prejudice of their justly offended masters, that has happened in the family; that there cannot be found one person, from the highest to the lowest order; no servant, no equal, no relation, no friend to shew this man's conduct was not what I wish yours to be. When I am to make a reply in a Court of Justice, I am not to take my brief, and turn it over leaf by leaf, to reply upon every part of it, but only to give you a sort of caution as to the evidence upon which your judgment is to be formed. You are desired upon the evidence of Mr. Wolseley, (who I dare say spoke the truth), to believe, and I pray you will do me the favor to attend; for it was intended to make a deep impression; he is one of the persons called to tell you this, and I ask you and my Learned Friends if you believe that a man could be

so brutal as to go up to his wife and tell her that he had just come from the enjoyment of another woman; I know that such a thing was impossible—Lady Valentia was a very different person, she did not believe that her husband had any propensities of that sort. What said Mr. Wolfeley, that he had just had to do with a pretty girl, or something of that sort; every man does it, it is a sort of animal function.—A man who is the least proficient in music, if he hears an instrument played out of tune, it jars his ear, so that if you hear something stated that had no probability in it, a man shrinks back from it, because it is something grating to nature. Mr. Wolfeley told you, and who did not mean to misrepresent, I do not say he did, that the Plaintiff said, he had just had to do with a pretty girl; and that he said it in a jocular manner. Suppose he had been heard to say—"How deeply in love I am, I am gone, I must part with you," how could you say it might not turn out to have been said to a child in another room; but mind at what time it is. If my Lord Valentia is to go out of Court disgraced, I will take care it shall not be owing to me. When expressions are equivocal, when they bear two constructions are you not bound to put that upon them which most falls in with common sense—are you not bound to put that construction which is most favorable?—In this case, he is represented by the Lady who gave her evidence, in a way which gives the lie plumply to every thing said against him, and whoever looked at her features, I will maintain,

never saw a more beautiful, more modest, and decent person, of her rank and station, in any cause; I am sure, I never did, than that *Lady Lucy Maxwell* ——— What did she say—that there was not a wish which she had in which she had any thing to do but to express to have it gratified. As our immortal Poet describes affection, “*So loving that he permitted not the winds of heaven to visit her face too roughly.*” Fond of her to distraction, which was also confirmed by that very Gentleman who tells you the story about the pretty girl; and it shews you the danger of this species of offence; and, I am bound, in justice, to say, that circumstance, (had this case been in the hands of a less judicious advocate, than the Gentleman’s whose assistance I have), it might have passed over; for, by his examination, you find the Witness was upon a visit at the Plaintiff’s, for six or seven weeks, and never observed any thing more than those little spots of passion, which every man is subject to.—Even that Gentleman’s evidence, gives the lie to the construction which is put upon his conduct; for he tells you, that except those little spots of passion, he was the most affectionate husband he ever saw.—Put those things together out of the mouth of the same man, and I ask logicians in the Court to tell me, whether if I say he is a tender and indulgent husband to his wife, and he in the hearing of a Witness who puts no construction upon what he says, that he had had a pretty girl, and she laughs and says—*It is all one to me*; I ask, whether you would pull a feather out

of the wing of sparrow upon that evidence. Whether you would degrade your own judgment in the opinion of mankind, and go barely upon the evidence of this man.—Yet this is as gravely stated as the rest; to be sure, my Learned Friend must go to market with what eggs he has in his basket, and had he brought no more than one it would have been thrown at the head of my client.—If a man will say to his wife, I have had a pretty girl, meaning to insult her, meaning to confess adultery, I say that woman is not vindicated in the eyes of God for giving up her own honor; but, I do say, the man who desires to call another to account for it, ought not to expect any large recompence. We are agreed upon principles, but we are at issue upon facts. Let us plough on a little and consider, is my Lord Valentia an unnatural man? That is given up as if a man attacks me in the street and after I have knocked him down and beat him three hours, he has given it up; he is vindicated in the eyes of his country.—So it is a prodigious courtesy, that it is given up—Lord Valentia is cleared of that—therefore, she must hang out another charge by which the parties may be taken by surprise, and surprise we are taken with. My Lord Valentia has been examined by us in the most serious manner with respect to these charges, and he has given the most positive denial to them; yet knowing all this was to be brought against him, he comes into a Court of Justice to stand upon his honor for the injury he has received.—Having gone through this

part of the case, I will look to what the charge is against him; it is not only that he was privy to his wife's bad conduct, but that he was so profligate, for so Mr. GIBBS expresses it, and I find no fault with the expression, that he could not help connecting himself with other women, and then to tell her of his conduct. Has he been shewn by any one Witness to have lived in any improper intercourse with any woman, or so to have conducted himself in any of the various mixed companies; has he been shewn to be a man of that description; and if he was a man of that description upon what principle can the other charge be supported? Mr. Gawler, the father, was married to a respectable woman, no doubt, an aged matron, with two sons against neither of whom I have said any thing out of the cause, it is not my practice; one of them, the Defendant, and the other a member of my own honorable profession. I have no disposition to say any thing against Mr. Henry Gawler, but I ask this, and I put it for the credit of Mr. Henry Gawler, whether it can be believed that he knew, at this time, that Mr. John Gawler, was living in adultery at his father's house with Lady Valentia? For if he did, he being the son, it was incumbent on him to reveal it to his father, but as he states being the brother and the son he never communicated this fact to any one till it was discovered by my Lord Valentia, then was he (Lord Valentia) blown upon, then was his character attacked, and then, for the first time. Let me now, Gentlemen, inform you what impression has been made upon me

by the evidence adduced in confirmation of this attack. Declarations have been brought forward of Mr. J. Gawler, and licentious expressions of several other persons. At first, I was shocked to find Lord Valentia represented as a man who had over-leaped all chastity, morality, and honor: but the moment I heard it was the licentious discourse of men filled with wine and folly, I threw it aside, because those things do not deserve the name of evidence; and the question is, how they will affect this cause when they come to be considered. I vow, I never was more astonished than when my Learned Friend began to state those expressions, and I had abandoned every idea of reply; I did understand from my Learned Friend's opening as he took it from his instructions, that there was a Clergyman to be brought forward, therefore, says he, it rests not alone upon the evidence of Mr. Henry Gawler, but I will introduce to you a Rev. Clergyman, (and Gentlemen, it always strikes me with awe when such a man is produced) totally unconnected with them, and he will tell you that my Lord Valentia brought the Defendant down to Rambridge, at the house of the father, in order to convince the world that the adultery he understood had been commenced was with his consent and approbation. If the Archbishop of Canterbury was to come (and I beg his pardon, I ought not to mention any one personally) but if the most Rev. Prelate was to come to prove that, I should not say it could not be true, but it is surely out of the whole

course of human affairs, that a man is not happy unless the world believes him to be a scoundrel and a degraded cuckold ; but a man is not to blame if he suffers, not by the criminality of his own acts, but by the crime of another whose character he is not acquainted with ; and I put it to any man, whether he would chuse to be esteemed as a man having no respect for honor or morals, or as being a cuckold.—I very much doubt whether every man would not chuse the first ; this Gentleman, Mr. Bailey, has stated himself to be totally unconnected with Mr. Gawler, although it appears Mr. Gawler managed all his father's affairs, which ended in that unfortunate father being undone ; and this very Mr. Gawler so unconnected with the family, happens to be by mere accident in the very estate of this Gentleman. This Gentleman has some annuity, but out of what it is we know nothing, but supposing Mr. Bailey to be as immaculate as possible ; I shall make no other observations upon him ; let us see what the evidence amounts to ; I am not here upon the total denial of certain conversations having passed, but see what the effect of them was ; for Mr. Maxwell has told you that he informed Lord Valentia at an early period, that the Gawlers would undo him ; that he quarrelled with my Lord Valentia at the very imputation, that they had got such possession of his mind, and such was his confidence in their integrity, that he suffered his sister to go out of his house because he could not bear to consider that Mr. Gawler could act in any manner

wrong. What Mr. Maxwell said was this, "I saw no behaviour of my Lord Valentia that could lead me to suspect any improper conduct, nor should I, had I not been acquainted with Mr. Gawler's character, and the reason I did not tell him before that time was, because we had differed before, he being so prepossessed in favor of the Gawlers. My friend, Mr. Gibbs, was incorrect in his attack, the evidence was that Mr. Maxwell had made observations upon their conduct in other respects, and he says, I found my Lord Valentia so completely in their possession it would be in vain to speak to him about it; and he thought it would be better to abstain than to tell him the fact. Why did not my Learned Friend go on and examine Mr. Maxwell to see whether there was any conversation that could lead him to consider there was any just ground for that observation? With respect to the substance of Mr. Bailey's evidence, it appears to me that my Lord Valentia did that upon this occasion, which I believe many others would have done, for he was in possession of the highest confidence in the Gawlers, he conceived they had been slandered on the subject; and in order to convince the world that he was conscious Mr. Gawler, had not been in his father's house upon any adulterous intercourse, being desirous that his own reputation should not be wounded and that it should not be supposed that the man who was devoted to him had taken advantage of his absence to wound him in the tenderest part; he was desirous to shew his friendship, and he came

down with him in order that the world might see they were friends, and, that of course, the suspicions were false. Mr. Bailey says, what little he knew of Lord Valentia, was through the introduction of Mr. Gawler; this may be considered as an unfortunate coincidence of circumstances, but taking even his expressions, that he came there one day and returned before day-light, and said he knew the Defendant was intimate with his wife, and that he knew of the reputed criminal intercourse between Lady Valentia and Mr. Gawler, then he says, that, to convince the world it was with his approbation they were together, he had brought him down in the chaise with him;—to convince the world it was with his consent there was adultery committed; not to disabuse the world by correcting the slanderous report, but to convince the world it was entirely with his approbation—I would ask you, Gentlemen, and put my Lord Valentia into your hands to stand or fall by the answer, as I think I understand the meaning of those expressions, whether it was not exactly the reverse of what is contended, and afraid of his wife's being considered false; having confidence in the honor of Mr. Gawler, and believing there was no other way to convince the world that Mr. Gawler was at Rambridge with his consent, he brought him down with him in familiarity and friendship, and went away the next morning having no object of suspicion in his mind, being so unfortunate as to be under the necessity of removing his affairs; being in so deranged a state, he wished the world to be con-

vinced of her chastity, and that the Defendant was a man whose honor was above all suspicion; Gentlemen, those are points in which the conduct of a husband cannot be blamed, where is the reason, and why are we upon this particular occasion to say he is a man different from the whole human race from the time of Noah, and yet you are desired to say that upon your oath, from the ambiguous expressions proceeding from a very suspicious quarter of information. So much for the evidence of Mr. Bailey, who states that he believes that was what he meant, and was what he said; I can only say it is a singular thing that he should so express himself to a regular Clergyman, who was an utter stranger to him if the meaning was as they insist.

GENTLEMEN, we then come to the evidence of the Gentleman whose name I before mentioned, and who is a person I know; he has given evidence of what passed at Mr. Henry Gawler's after dinner, and in the evening, you find this was a discourse that took place in the presence of seven or eight young men who were met together to be merry, and to shew that my Lord Valentia could have no meaning in what he said; and though these things are immoral and are jests which are indecent, yet we are not trying whether he used improper jests, but whether he is such a man as is represented to you, and to shew he had no such meaning as is represented, I apply to the evidence of Mr. Henry Gawler — Has there been any imputation which

Mr. Gawler ever heard whispered that does not appear in the asperity that has mixed itself in this cause? Mr. Henry Gawler says, he asked me whether I, as well as my brother, had not been intimate with his wife, and said he, I always laughed—It is totally impossible, my Lord Valentia could mean those expressions in the light my Friend construes them; for it is proved that Mr. Henry Gawler never communicated to my Lord Valentia his suspicions, though he states in his examination upon one occasion that he thought his brother was intimate with Lady Valentia; but he did not, as a friend of my Lord Valentia, observe it to him; such is the conduct of Mr. Henry Gawler, (who is stated by my Learned Friend, to be a respectable member of the Law;) but my Lord Valentia continued as a guest at his house, notwithstanding the frequent repetition of the expressions which my Learned Friend has pulled out of his mouth. I would ask whether that would have been the conduct of any man, if he had really meant to charge Mr. Gawler seriously with having been intimate with his wife, for he says, it was spoken jocosely. If he said it, knowing at the time Lady Valentia was living with Mr. Gawler, what would become of that respect which Mr. Gawler professes for him, by permitting the Lady to be in the house of the father? Gentlemen, though I do not approve of the expressions which are of an indecent complexion, and however he may have expressed himself, yet there is not the least pretence for saying he connived

at the infidelity of his wife; for, Gentlemen, I might call every man who has seen him, and who is acquainted with him, to witness the sufferings he has had upon this subject.—My Learned Friends and I differ in no principles in the cause; you will have only to ask these questions upon the evidence of the witnesses; Does he appear to be a man who has lived affectionately with his wife? You cannot answer that but in one way, which is supported by the most respectable testimony I ever heard in a Court of Justice;—You will next ask whether there was any interruption in that harmony till his absence took place on account of the embarrassment of his affairs? to that the same answer must be given—The third question is whether it be consistent with human nature and human experience, that a man whose affections were fixed upon a woman of great beauty and accomplishments should abandon her, and that she who was only 17 years of age should become a candidate for shame and dishonor, in order that she might be turned out of his house by an adulterer coming into it;—Let every man lay his hand upon his own breast, and let every man tax his recollection whether he has not made use of expressions he would blush to hear repeated upon oath in a Court of Justice; I certainly have, I plead guilty to that, and I should be the worst of civilized men if I did not, and if any man had the impudence to come and state they had not, I would not believe them, but I would only ask whether that is entirely to overturn a man's character and repu-

sation if any man was to come forward against me with such a charge I should say I put myself in the judgment of all who know me, in the judgment of common experience ; whether any man could be supposed to say so, and whether it could lead to an offence of this nature.

GENTLEMEN, you have before you a person noble in her birth, beautiful in her person, who was loved to distraction by her husband, who had never been connected with any other man, and who was never seduced by any body, till by this defendant—It is impossible to say the Plaintiff led to this Seduction, what evidence is there, that my Lord Valentia ever said or did a thing that would lead her away from her virtue ; you must judge of her as of women in general, you must judge of him as of men in general, you must consider her as drawn aside from the path of duty, but according to the preposterous proposition of my Learned Friend, you are to believe it was without any seduction at all she departed from the path of duty, without being liable to fasten any blame upon Lord Valentia—Do they mean to state these Tavern conversations were repeated to her for the sake of corrupting her mind, because if they were repeated, who could repeat them but the adulterer, and that will be matter for your consideration not mine.

GENTLEMEN, I have heard from the most sagacious judges there is nothing so dangerous as to determine upon confessional evidence, more espe-

cially when that evidence is not accompanied or supported by facts—If I had stood here without any evidence at all, and had only put in the Register of the marriage, and had waited till my Learned Friend had put in an answer, I could have no observation more cogent than that our case is contradicted by facts not possible to exist; for I ask you whether you can believe the Plaintiff is the man that he is represented by my witnesses, and at the same time, as he is represented by theirs; that you cannot do, you must chuse between them, and if you do that, will you set ambiguous expressions against conduct, will you set ambiguous expressions against the result of a life, such as it has been communicated to you, will you set that in opposition to what I maintain is completely repugnant to the cause of your own experience, from the time of your birth, up to the moment I am now addressing you?

GENTLEMEN, with confidence I leave my case with you, being satisfied my client will receive that recompence at your hands with which he, and every man ought to be satisfied.

Summing up.

LORD KENYON. *Gentlemen of the Jury.* By the unwearied exertions, the abilities, and eloquence which have been displayed by the Gentlemen on

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both sides of the case, you are now in possession of all the circumstances that can be laid before you; therefore, there is very little for me to do; however, there is a duty for me to discharge, which I shall not consume much of your time in performing.

GENTLEMEN. In whatever view you take this cause, and the facts of it, it exhibits but a melancholy picture of the times in which we live:—I have been a witness, and probably you have been witnesses, being in the same situation in which you are now, of cases disclosing a great deal of profligacy; and all the Juries have co-operated with me as far as we could, in administering Justice to the injured parties who have brought cases of this kind before us; and the Juries and myself have thought we did not transgress the line of our duty in endeavouring to administer Justice to the party injured, not only to repair the injury, but to see if we could not repress the licentiousness of the times. Hitherto the history of the day shews it has not been done; the Hydra-head sprouted up, but at last the strong man got the better; let us, therefore, endeavour, as far as we can, not to be remiss in our duty; but as the morals of the people are in some manner entrusted to our care, let us see whether we cannot better those morals, and by making the people sensible it is their interest, convince them it is their duty to be virtuous; but in doing all this we must take care to keep within the legal limits; those rules

which the wisdom of former times, and the present, have established for the administration of Justice, it will be fit to attend to; and in order to repress these evils, not to violate or transgress the line of the law. Gentlemen, it has been truly stated to you there are in cases of this kind very great differences indeed, and we must lament the depravity of the age which produces such a number of them;—In some, the circumstances go to aggravate the damages, and the material act must be committed, yet the party who applies to the Court must put himself in a situation to demand recompence, and a case has been alluded to in which that rule as been adopted by many Judges, and since, by myself, when I have had occasion to address a Jury on such subjects—There are some cases that call for the highest damages that can be given, and others where the smallest would be almost too much; and there are others where an action cannot be maintained, as in the case of Cibber, and against whom an action was brought, and it appeared that he actually put his wife and the man in bed together; there the Court was of opinion the husband ought not to be favored; undoubtedly there are circumstances in this case, as they appear to me, which I confess at present I cannot reconcile; you will apply the facts to the case I have stated, and if you are of the same opinion with that Jury you will act as they did, but I do not see any thing that goes quite that length.

GENTLEMEN

GENTLEMEN.—I am bound here to call particularly for your attention to the Adultery, which is imputed to Mr. Gawler, he is proved by the witness Mary Kennimore, to have been at his father's house after my Lord Valentia went abroad, she proves that after she had undressed her Lady and left her, she found the door of Mr. Gawler's chamber open, and suspecting all was not right she went and heard his voice in the room of the Lady, and she observed in the morning the state of the bed as if two people had been in it; that I take to be positive proof and sufficient for maintaining the action, and I do entreat you particularly to attend to the dates—In the spring of the year 1794, he went abroad, and you will take a view of all the facts between that time, and the time he had a right to complain, to a court of justice; he himself is a Nobleman of a great family, the Lady is of one of the most illustrious in the Kingdom, and connected with the greatest families in this country.—he was of the age of 20, and she of the age of 16 only, which makes it more probable, considering the years of the parties, it was a match of affection only; from that time to the time he went abroad, all their domestic acquaintance have been brought before you, they have brought those who were most likely to know the state in which they lived, and they proved they lived in harmony and happiness together—there was one lady called who stated it forcibly, and the manner in which she gave her evidence does honor to the virtuous family from

which she sprung; I mean Lady Lucy Maxwell, and it is but justice to observe it did honor to her, and was such as became the grand-daughter of the virtuous Lord Littleton—she gave evidence before you impressive and striking to every body; but it does not rest there, for the other witnesses who had access to her, state that all was harmony without a single exception, except that which arose from what sometimes is attendant on young minds; they state to you that during all the time of their acquaintance, at every place, nothing appeared but the most entire affection and tender, kind usage. Before the eyes of a superior rank of men it may be said they might act under disguise, but you will find that to the confidential servant no complaint was made by the Lady; yet we have had cases where the complaints of the injured female have been poured out into the bosom of the confidential servant; here the young woman, and all the witnesses who have been called, speak in uniform language of the affection which subsisted down to the time when Lord Valentia went abroad; there was nothing that can be said to have interrupted the most entire affection between them.—I shall mention one circumstance, but first I will observe in the year 1790, when he married, he, is stated to have been 19 or 20 years of age; in the preceding year of 1789, by his own nearest friends he was introduced to the acquaintance of the two Mr. Gawlers; he was introduced by Sir Henry Cavendish, who was his near relation. Young

minds are the soil wherein the plant of confidence soon takes root, he had confidence in this acquaintance, as the history of the cause shews; their acquaintance continued till his affairs became deranged; when he applied to Mr. Gawler, the father, who was one of the trustees, with another gentleman, who I see in my eye, Mr. Roberts of Bewdley, who is a man of unimpeached character, certainly; however, Mr. Gawler was the person who was to help him out of his entangled affairs; the sequel shews the confidence was reposed in one, and not the other; as soon as he was gone abroad, when the housekeeping was necessarily broke up at Areley, this poor unfortunate Lady was to be deposited somewhere; where was it to be, at whose instigation, by whose means, upon whose insinuation? and presently you will ask yourself for what purpose, she was deposited in the house of Mr. Gawler, the father; her husband being abroad, no longer able to superintend her conduct, or protect her virtue; but it was thought that a person so clothed as Mr. Gawler was, that his house was a safe retreat to deposit this Lady in; there she was deposited, and there she was debauched—Gentlemen. I am not sure whether the important points of the cause have not now arrived at their conclusion: because, if at that time she was seduced; if she was by artifice, bereaved of her virtue, and the injury was then consummate, at that time the cause of action arose, and how can it be varied by circumstances which have happened since,

I remain to be informed; but still those circumstances ought not to be kept back.

GENTLEMEN.—I think I don't mistake, and I am aware of the whole complexion of the case, I hope; but I think that every circumstance of levity charged in the conduct of my Lord Valentia takes its date subsequent to the time of this transaction, except one circumstance, spoke to by one witness, namely, Mr. Henry Gawler, which he stated to have happened in 1792—Before he got to the end of his evidence he informed you that all he could say was, he had some suspicions of improper conduct before Lord Valentia went abroad; if there had been no room for indulging distant suspicion they certainly never could have existed; but he says he communicated them to nobody; therefore, I am bound to extend it down to the time when Lord Valentia went abroad, that there was nothing imputable to him; no misconduct, which goes to palliate the offence of the present defendant, but all his conduct has been described as the most indulgent and affectionate to his wife; nor does it appear that he had till his return from abroad, the most distant suspicions—the evidence which has been given, certainly shews that my Lord Valentia in certain companies talked language which we are sorry to hear from any body, but more sorry to hear from one of the higher rank of life, whose conduct ought to be marked out in such a way as not to corrupt the lower order;

the morals of the higher rank are of great importance to themselves, and ought to be adapted to keep the lower rank impressed with a respectful opinion of them, who look up to their superiors for example.

GENTLEMEN.—I will not go into all the evidence which has been given ; what Mr. Bailey said, I protest, I am not sure that bears any considerable construction—he tells you that my Lord Valentia told him the world had said the defendant was intimate with his wife, and that to convince them it was not true, he had brought him down—is it natural, or can it be supposed that if he believed it to be true he would say, I now avow it to you, I believe they have had improper connexion ; on the contrary, he says, she has been deposited here—the world has been ill-natured enough to cast reflection upon her character—I come down here to state my disbelief, and to wipe away those aspersions—I think that is the fair construction ; And if I had happened to hear the same conversation, I protest that is the conclusion I should have drawn—what is said afterwards, what passed in the tavern and in the coach, you are in full possession of ;—these, I think, are the main points of the case, and I do beg leave to call upon you to attend to the dates ;—if after the time when the ground of an action was laid, and nobody could know what might be the consequence ; if artful and cunning people should have attempted to bring

forward other facts, they ought not to avail themselves of them.—You are called upon to decide upon the injury he received whilst he was abroad, and whilst his wife was in the house of Mr. Gawler; and for that injury you will, as far as you can by your verdict, make him reparation.

VERDICT for the PLAINTIFF,

Damages, TWO THOUSAND POUNDS.

May 19, 1796.

THE END.

forward other things, and to a small library of literature - for a small library of literature, and the injury he received, and the hands of the Doctor, and for this, your verdict.



For the President,
DANIEL TWO THOUSAND NINETEEN.

NO. 10, 1892

THE END